

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3 BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

4 ORACLE USA, INC., a Colorado :
5 corporation; ORACLE AMERICA, :
6 INC., a Delaware corporation; :
7 and ORACLE INTERNATIONAL : No. 2:10-cv-0106-LRH-PAL
8 CORPORATION, a California :
9 corporation, :
10 Plaintiffs, :
11 vs. :
12 RIMINI STREET, INC., a Nevada :
13 corporation; and SETH RAVIN, :
14 an individual, :
15 Defendants. :
16

17 TRANSCRIPT OF JURY TRIAL - DAY 17
18 (Pages 3338 through 3641)

19 October 6, 2015

20 Las Vegas, Nevada

21
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1 LAS VEGAS, NEVADA, OCTOBER 6, 2015, 8:11 A.M.

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3 P R O C E E D I N G S

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5 (Outside the presence of the jury.)

6 THE COURT: All right. Have a seat. Good
7 morning to everyone.

8 There are some issues that need to be addressed
9 here by the Court.

10 The record will show that we're in open court.
11 The parties and counsel are present. The jury is not
12 present.

13 Late yesterday afternoon, actually in the
14 evening hours, the Court provided counsel with the proposed
15 instructions to be given in this case, and we also
16 discussed exhibits that were not yet fully resolved and
17 before the Court.

18 And since that time Oracle has withdrawn a
19 pursuit of its claim under the federal computer law claims,
20 I forget the exact description of the type of claims, and
21 so the verdict form required some modifications.

22 A verdict form -- I should have stated a verdict
23 form was also distributed last night.

24 And I've also received some requests for
25 modification to the verdict form in light of -- on behalf

1 of Defendants Rimini which I agreed with in large part, and
2 I also saw some additional language that was needed on the
3 verdict form.

4 So we will be distributing the proposed verdict
5 form to you very shortly, but I believe that it is -- will
6 be our final verdict form for the jury.

7 Essentially the modifications to it are to
8 withdraw the federal computer claims requested by Oracle to
9 clarify some of the language about Rimini's lost profits
10 not being included in Oracle's lost profits if the jury
11 returns damages for lost profits, some language clarifying
12 the approach to the respective defendants, Rimini and
13 Ravin, and language pertaining to calculation of total
14 damages, which will be self-explanatory.

15 But I would tell you that I think I wouldn't
16 expect to see objection from either side, but certainly if
17 someone sees something that they're objecting to, please
18 bring that to the Court's attention.

19 I think we are at the point where the verdict
20 form should be acceptable, and I say that not just based on
21 the Court's ruling but on the impressions I have picked up
22 from all counsel in this case.

23 I didn't -- well, one point I wanted to address
24 was in the proposed jury instructions I did not give -- the
25 final draft of the proposed instructions did not include

1 Oracle's proposed additional instruction concerning
2 TomorrowNow and CedarCrestone which essentially would have
3 resulted in the Court instructing the jury not to consider
4 TomorrowNow and CedarCrestone essentially because they
5 would have been infringing alternatives.

6 I did not give that instruction because the
7 evidence in front of the jury does not show that
8 TomorrowNow or CedarCrestone was either infringing or
9 noninfringing, but there has been testimony and evidence
10 identifying both TomorrowNow and CedarCrestone.

11 But the other side of that coin is that
12 throughout the case defendants, sensitive to TomorrowNow
13 and CedarCrestone, throughout the trial have represented
14 that essentially -- and I don't mean to oversimplify
15 here -- that they weren't going to be arguing that
16 TomorrowNow or CedarCrestone were non-infringing
17 alternatives, and essentially that's what happened as
18 evidence unfolded in front of the jury.

19 The Court has certainly been concerned over the
20 fact that TomorrowNow was prosecuted both criminally for
21 what I suspect, but don't know, were fraudulent and massive
22 copyright infringements of Oracle's product.

23 The evidence in front of the jury is that the
24 business closed down again. I think it was -- the
25 inference is it was because it was an infringing company,

1 and, of course, CedarCrestone ultimately resulted in
2 litigation between Oracle and CedarCrestone, which resulted
3 in a resolution of that case in favor of Oracle and
4 resulted in an affidavit of the CEO from CedarCrestone
5 confirming that their activities had been very infringing
6 regarding copyright violations.

7 But that -- all of that occurred beyond our
8 timeframe in this case, 2006 to 2011. That evidence was
9 not admitted all the way around and partly because it was
10 being represented by defendants that they were not going to
11 be arguing that TomorrowNow or CedarCrestone were
12 noninfringing.

13 So on the basis of that history and
14 background -- and I would say that the Court still doesn't
15 have evidence in front of the Court, even considering
16 everything and without regard to what the jury has heard,
17 that the Court could make a legal conclusion that
18 TomorrowNow and CedarCrestone were infringing alternatives.

19 So given the state of the evidence in front of
20 the jury, and given that history that I've just outlined --
21 and I haven't covered every detail, we're short on time --
22 I eliminated and decided not to give the instruction
23 requested by Oracle on TomorrowNow and CedarCrestone.

24 But since there is evidence on these issues, I
25 wanted to clarify that I do not believe that either party

1 should be arguing in closing arguments that TomorrowNow or
2 CedarCrestone were either infringing or noninfringing.

3 There is no evidence in front of the jury to
4 show that one was infringing and one was not infringing,
5 but it certainly would be improper for defendants to be
6 arguing that TomorrowNow and CedarCrestone were,
7 quote/unquote, noninfringing alternatives in light of the
8 history that's been laid out before the Court.

9 Essentially the Court views this as a matter of
10 estoppel, judicial estoppel, for lack of a better term,
11 because the legal position taken by defendants was not to
12 pursue TomorrowNow or CedarCrestone as noninfringing
13 alternatives.

14 But, by the same token, I think in fairness it
15 would be improper for Oracle to be arguing that TomorrowNow
16 and/or CedarCrestone were, in fact, infringing alternatives
17 and should not be considered.

18 So the bottom line is I don't believe that the
19 words infringing or noninfringing should be attached to any
20 references to TomorrowNow or CedarCrestone in the course of
21 closing arguments, and the Court would be sensitive to
22 objections concerning argument that might imply one or the
23 other. But that's not to say that counsel cannot reference
24 TomorrowNow or CedarCrestone in their closing statements.

25 Now, turning to another issue that concerns the

1 Court, I -- of course, this has -- the number of exhibits
2 in this case are astounding. And I don't need to comment
3 further. Just a review of the pretrial order in this case
4 would show the thousands and thousands of prospective
5 exhibits that may have been considered in this case.

6 That has been winnowed down by counsel, and I
7 appreciate that. And we've had a reduced number of them
8 presented to the jury. But they are still massive.

9 In last night's discussion we talked about any
10 rulings that had been taken under submission by the Court,
11 and a number of exhibits were identified.

12 The Court resolved PTX 609 and 2152, and they
13 were admitted. The Court resolved DTX 290A, and a redacted
14 format was to be admitted.

15 But as to all of the other, and certainly this
16 included DTX 152, 153, 154B, 164A, and 340 -- Madam Clerk,
17 did I have those numbers correct?

18 COURTROOM ADMINISTRATOR: And you have two --

19 THE COURT: I think I ruled some of those
20 admitted last night.

21 COURTROOM ADMINISTRATOR: 274 is still pending.

22 THE COURT: 274?

23 COURTROOM ADMINISTRATOR: 292, and you mentioned
24 340 already, and then 345.

25 THE COURT: 340 is not in yet.

1 COURTROOM ADMINISTRATOR: Correct, and 345.

2 THE COURT: Is -- 340 is not in?

3 COURTROOM ADMINISTRATOR: No.

4 THE COURT: How about 345?

5 COURTROOM ADMINISTRATOR: No.

6 THE COURT: 153?

7 COURTROOM ADMINISTRATOR: No.

8 THE COURT: 152?

9 COURTROOM ADMINISTRATOR: No. None of the
10 others are in except for we need to actually admit this
11 one -- 290A they have to give to me. They haven't given it
12 to me.

13 THE COURT: So anyway, what has not been
14 admitted at this point in time are Exhibits 152, 153, 154B,
15 164A, 340, 274, 292, and 345, and we have also not received
16 the one that the Court did rule on, 290A.

17 It's disturbing to me, obviously, that these
18 have not been presented to the Court for final ruling until
19 after both sides have rested and we're literally at the
20 point of closing statements, instructions, and jury
21 deliberations.

22 These exhibits are extensive, and I'm interested
23 in counsels' thoughts with regard to approaches.

24 The first thought I had was that -- let me go
25 through some history here too.

1 I believe that with a large number of these
2 exhibits, the Court's understanding was that counsel would
3 attempt to work out redactions based upon a guideline
4 ruling of the Court that it recognized hearsay as to a
5 number of objections, hearsay having been argued by Oracle
6 as to client references within these documents.

7 And the Court further indicated, however, that
8 if the entries reflected present sense impressions of the
9 Oracle employees in the course of administering their
10 business records that that would be admissible.

11 I understood that counsel were going to work
12 between them to attempt to produce exhibits that would
13 reflect the Court's view.

14 We proceeded then with trial. And everyone
15 knows how complex and how many witnesses and how many
16 counsel have been involved in this case. As I recall,
17 these discussions went back to the early part of next week,
18 may have -- or last week, may have even gone -- arisen in
19 the week before that.

20 Although I understood counsel were going to be
21 working on this, I never was presented with anything, and,
22 of course, we were aware that the Court had reserved ruling
23 on these exhibits.

24 So when the issue arose last night about how
25 about those exhibits where the Court's reserved ruling,

1 some of them weren't even presented to the Court with
2 regard to the proposed defendants' form versus the proposed
3 plaintiffs' form, and I have just been provided with those
4 this morning.

5 Essentially what I see are the following
6 options. And I'm interested in counsel's reaction as well.
7 First of all, I can excuse the jury, and we will wade
8 through the objections, and I'll wade through the exhibits.

9 I'm just holding up, for the benefit of counsel,
10 just one of them, DTX 274, which appears to me to be -- if
11 you include both the unredacted and the redacted formats,
12 it appears to me to be at least 70 to 100 pages of entries.

13 Looking at 274, it appears to the Court to be a
14 comparable size.

15 So this concerns me. It obviously would take a
16 great amount of time to resolve these one by one. I'm very
17 disappointed that counsel were not able to agree on
18 something that would be admitted, and I'm also disappointed
19 that I was informed -- not informed about the disability
20 until last night.

21 So I'm not high, I can tell you for sure, on
22 continuing and holding off this jury in hearing this case
23 until we have waded through all these exhibits.

24 One alternative I see is to admit the exhibits
25 in their redacted form. Essentially what that does is it

1 gives Oracle the benefit of all of its objections, but it
2 also would give defendants some benefit concerning
3 identification of client loss.

4 And I essentially would give that option to
5 defendants. Because if I'm going to recognize all the
6 redactions urged by Oracle, I would want defendants to have
7 the option of whether they want to admit the exhibit or
8 not.

9 A third and possible alternative might be to
10 take some of the exhibits that are shorter in form, for
11 example, I'm looking, just as an example, at 154B, that we
12 could go through in a fairly summarized fashion and the
13 Court could rule on that in a fairly short order.

14 We could take some delay. I wouldn't have to
15 hold the jury off as long to resolve those issues, but that
16 would not include all of the exhibits.

17 So I'm interested in counsel's thoughts
18 regarding this. And I'll hear from you, Mr. Webb.

19 MR. WEBB: Good morning, Your Honor.

20 First of all, I apologize. Our wi-fi in our
21 hotel was out all night last night, so we're a little --
22 trying to catch up.

23 With the Court's permission, I would like to
24 take five minutes and confer with my team about a solution
25 that might be able to fast forward everything, if that's

1 okay.

2 THE COURT: Okay. And bring plaintiffs' counsel
3 into your loop.

4 MR. WEBB: I will.

5 THE COURT: So that we can minimize the amount
6 of time necessary.

7 MR. WEBB: Sure. It shouldn't take more than
8 five minutes, Your Honor.

9 THE COURT: All right. Court will be adjourned
10 briefly.

11 COURTROOM ADMINISTRATOR: Please rise.

12 (Recess from 8:31 a.m. until 8:50 a.m.)

13 (Outside the presence of the jury.)

14 COURTROOM ADMINISTRATOR: Please rise.

15 THE COURT: Have a seat, please.

16 Before I hear from counsel on this remaining
17 issue, I have just asked my court clerk to pass out the
18 proposed verdict form.

19 I would tell you that I did not have personal
20 time to review it for final approval by the Court, but I
21 had explained to my clerk what I wanted in there, and my
22 preliminary review indicated that it was as I instructed.

23 So if anyone sees something in there that they
24 are particularly concerned about, please let me know, and
25 I'm open to addressing that before it goes in to the jury.

1 So that takes us to the dilemma with regard to
2 the exhibits upon which rulings were reserved.

3 Mr. Webb?

4 MR. WEBB: I believe -- we've conferred, and we
5 think that Your Honor's suggestion is a good one. We will
6 accept the redactions and offer them into evidence as
7 redacted documents.

8 The only rub is that we have to actually do the
9 redactions. Our team is working on that now. We hope to
10 have the actual documents redacted and ready to give to the
11 jury well before the jury gets the case.

12 THE COURT: All right. I would say that I
13 understand both sides' positions in this case, and I think
14 that there's abundant evidence to support both sides'
15 positions with regards to the exhibits that are in evidence
16 in the unredacted form that are actually in front of the
17 jury.

18 MR. WEBB: Thank you, Your Honor.

19 THE COURT: All right. Thank you.

20 Mr. Isaacson?

21 MR. ISAACSON: Yes. Before closing statement,
22 there's two slides at issue, just to --

23 THE COURT: All right.

24 MR. ISAACSON: And one from each side. So I can
25 pass those up.

1 The first slide, Hampton and But-For Lies. This
2 would be the proposed slide that we would use.

3 This was unobjected-to cross-examination of
4 Mr. Hampton where I was asking him about his but-for
5 causation and avoided costs.

6 And I asked him about his theory as applied to
7 an investor who was ripped off by Bernie Madoff. And you
8 can see the quote.

9 And he said using his theory of but-for
10 causation, there would still be a real question as to
11 whether those investors should be compensated because maybe
12 they would have found another -- another crook, another
13 Bernie Madoff, which we thought impugned his whole theory
14 of but-for causation and avoided cost that he wants to put
15 before the jury.

16 And that would be the argument that we would
17 make based on testimony that was admitted without
18 objection.

19 THE COURT: Okay. And what's the second one?

20 MR. ISAACSON: The second one is a Rimini slide.
21 And you can see the title, "Contracts Clear?"

22 The jury instructions state that the contracts
23 are clear and that they are the province of the Court, and
24 it's not proper argument to argue that the contracts are
25 not clear.

1 I would further point out even on the question
2 of willfulness that the arguments as to whether the --

3 THE COURT: Wait a minute. Well, let me deal
4 with the first one first because I can see I'm not quite
5 tracking with what you're saying here, and maybe I should
6 hear it from defense.

7 MR. ISAACSON: They are two separate issues.

8 THE COURT: Yes. Let me hear from defense with
9 regard to the Hampton and but-for lies.

10 Mr. Reckers?

11 MR. RECKERS: Yes, Your Honor.

12 There's obviously a lot of testimony from
13 Mr. Hampton about his but-for causation theory.

14 They've chosen this particular line, I'd submit,
15 to inflame the jury. The comparison to Bernie Madoff and
16 that, obviously, Ponzi scheme is apparent.

17 It is -- violates at least the spirit of the
18 Court's motion in limine regarding not calling Rimini
19 thieves or other pejorative terms such as that.

20 So we would submit that this is unnecessary. It
21 provides a comparison to Bernie Madoff -- comparing Bernie
22 Madoff and Rimini Street, at least at some level, and we'd
23 submit it's unnecessary and unduly inflammatory.

24 MR. ISAACSON: And our point is it's fair
25 because it's unobjected to, to impugn Mr. Hampton, not

1 Rimini.

2 THE COURT: Okay. My view is this is in
3 evidence, that was the answer by the witness. I think
4 Oracle is entitled to show that to the jury, but that does
5 not diminish in any way my earlier ruling with regard to
6 thieves and theft and whatever the laundry list was.

7 MR. ISAACSON: I understand. I tend to be going
8 after Mr. Hampton at that point and not Rimini.

9 THE COURT: Okay. And also for the record, and
10 please correct me if I'm wrong, there was no objection made
11 to this response, no request to strike the response in any
12 way.

13 MR. ISAACSON: Right.

14 THE COURT: That's my recollection. Is that
15 correct?

16 MR. ISAACSON: Correct.

17 THE COURT: All right. Thank you.

18 All right. Let me hear from defense with regard
19 to the "Contracts Clear?" proposal.

20 MR. ISAACSON: I would say one more thing about
21 the "Contracts Clear?" point --

22 THE COURT: I'll hear from you after I hear from
23 him.

24 Mr. Reckers?

25 MR. ISAACSON: Okay.

1 MR. RECKERS: Yes, Your Honor. Thank you.

2 The "Contracts Clear?" obviously this is
3 discussion in the cross-examination of Mr. Allison that we
4 had the end of the first week, beginning of the second
5 week.

6 One of the issues in the case, as Your Honor
7 knows, and I'm citing specifically Jury Instruction Number
8 58 --

9 THE COURT: Let me stop you for a minute.

10 I'm trying to remember what the "Contracts
11 Clear?" reference was about. Help me out here.

12 MR. RECKERS: Sure. So if you'll recall, on
13 Friday of the first week and Monday of the following week,
14 Mr. Allison, who was an Oracle executive --

15 THE COURT: Yes, I recall Mr. Allison.

16 MR. RECKERS: And so -- and Mr. Strand went
17 through a cross-examination and talked about some of the
18 provisions and contrasted the provisions of the contract
19 and showed, from our perspective, that they're not as clear
20 as Mr. Allison represented on direct.

21 So we have --

22 THE COURT: You're talking about the
23 licensing --

24 MR. RECKERS: Yes, Your Honor, the PeopleSoft,
25 JD Edwards, and Siebel licenses.

1 THE COURT: Okay.

2 MR. RECKERS: And where that comes in, and what
3 the argument will be in closing, is that Mr. Ravin -- when
4 we look at the question of objectively reasonable
5 conduct -- and it's Jury Instruction Number 58 looks to the
6 objectable -- the objective reasonableness of the
7 interpretation.

8 We believe that the cross-examination testimony
9 of Mr. Allison shows that there are reasonable alternative
10 interpretations of the contract, and even, in the case of
11 Mr. Ravin, subjectively reasonable interpretations, that he
12 believed for things such as facilities that informed his
13 belief, and there was a reason why punitive damages in this
14 case are not appropriate.

15 So this is the one slide that we would put in.
16 It's supported by the evidence, and it's directly relevant
17 to the reasonableness of the conduct in the context of
18 punitive damages.

19 THE COURT: I understand what you're concerned
20 about.

21 All right. Mr. Isaacson?

22 MR. ISAACSON: All right. So the Court has
23 ruled that the contracts are clear. So the only issue is
24 whether any of this was tied to testimony of Mr. Ravin, and
25 that did not happen.

1 They didn't go back with Mr. Ravin, or any other
2 Rimini witness, and have them say, yes, I looked at site,
3 little s, capital S, territory, copies, copies, reasonable
4 number of copies.

5 This became purely a lawyer's argument about,
6 gee, we could have -- this could be considered ambiguous.
7 That was as a lawyer's argument that's been rejected by the
8 Court.

9 I would say the one exception to that would be
10 the first line, "Facilities, Not Defined." Mr. Ravin, as I
11 do recall, said Texas was not Texas in his interpretation.

12 So if they want to make that argument, that
13 would be fine. But there is no -- in terms of state of
14 mind, willfulness, et cetera, all the other line items on
15 here were not tied to anybody's state of mind.

16 This was purely cross-examination of Mr. Allison
17 about a contract which is purely a legal argument for the
18 Court to decide, and which the Court has decided.

19 MR. RECKERS: Your Honor, if I may?

20 THE COURT: You may.

21 MR. RECKERS: Instruction 58 talks about --

22 THE COURT: And please step to the microphone.

23 MR. RECKERS: Yes, sir.

24 The instruction talks about objective
25 reasonableness, so obviously -- excuse me -- the objective

1 reasonableness does not turn on individual defendants'
2 state of mind.

3 THE COURT: The Court's ruling will be that this
4 exhibit may be shown.

5 It is objective reasonableness. By the same
6 token, there's no limit upon Oracle's right or opportunity
7 to argue that that was not Mr. Ravin's testimony, and I
8 don't -- I assume counsel would be faithful to what the
9 testimony was.

10 So the demonstrative may be used by counsel.
11 Oracle counsel is free to challenge that as they deem
12 appropriate.

13 MR. RECKERS: And, Your Honor, could I say one
14 more thing for the record?

15 THE COURT: Yes.

16 MR. RECKERS: A number of their slides have
17 TomorrowNow in them, and we just want to make clear for the
18 record that we are maintaining our TomorrowNow running
19 objection as to their slides, but we don't intend to make
20 this objection further.

21 THE COURT: Right. That objection has been
22 viewed as a continuing objection to TomorrowNow, but
23 neither party is limited on the manner in which they can
24 refer to TomorrowNow with the exception of identifying it
25 as either infringing or noninfringing.

1 Mr. Webb?

2 MR. WEBB: Your Honor, I'm sorry to raise
3 something else, but just out of curiosity, I was wondering
4 if, A, we could have some guidance as to the content of
5 plaintiffs' rebuttal closing.

6 And my concern is, is that there may not be
7 issues raised in their first part that I can respond to and
8 issues that are raised for the first time in rebuttal that
9 I can't respond to. That's my first issue.

10 My second issue is I was just wanting to know
11 what the split in time is, whether it's going to be an hour
12 and a half, 30, I was wondering if I could get some
13 guidance on that.

14 MR. ISAACSON: We're 2 hours and 15 now.

15 MR. WEBB: That's right.

16 MR. ISAACSON: Our goal is to reserve 15 minutes
17 for rebuttal. That would be our goal.

18 MR. WEBB: All right.

19 MR. ISAACSON: And I understand rebuttal is
20 rebuttal, and I will stand up and say they said this, they
21 said that, and give a wrap-up.

22 MR. WEBB: Do I get extra credit if I stop short
23 of two fifteen?

24 MR. ISAACSON: I'm sure everybody will -- use of
25 your time going through the verdict form --

1 MR. WEBB: I'll try.

2 THE COURT: All right. Well, counsel knows the
3 rules with regard to arguments, and I'm not holding anyone
4 to specific a timeframe for rebuttal argument other than
5 the fact that it would be included within the two hours and
6 15 minutes maximum that the Court has allocated to each
7 side in the closing arguments.

8 All of that stated, I think we're ready to bring
9 in the jury, so let's do that.

10 COURTROOM ADMINISTRATOR: Yes, Your Honor.

11 (Jurors enter courtroom at 9:03 a.m.)

12 THE COURT: Okay. Have a seat, please.

13 The record will show that we're in open court,
14 and the jury is all present, and counsel and the parties
15 are present.

16 Ladies and gentlemen, I'm sorry for the delay
17 this morning. It's -- I mean, about the most I can tell
18 you is it's unavoidable.

19 As you're well aware, this case has involved
20 literally thousands of pages of exhibits, a number of
21 witnesses that I haven't even added up yet, and jury
22 instructions to you that are as long as we see in any of
23 our most complex cases. And there are always issues which
24 arise.

25 For what it's worth, I can tell you we were here

1 working on those until 6:30 or 7:00 last night, and that
2 doesn't include the work that's been done since then.

3 The bottom line is that it's all for the benefit
4 of being able to finish this case and present it to you in
5 a clear and concise manner and without having to take
6 further time from you once we get started here this
7 morning.

8 So we start this morning with the reading of the
9 instructions by the Court. This will take -- this is
10 obviously a complex case in which it is -- you're about to
11 start on the work that's before the jury in this case.

12 Other than hearing all of the evidence that's
13 been presented, some of your very most important work will
14 be now to deliberate this case and decide this case, and it
15 involves a number of issues, a number of legal issues that
16 will -- I have a total of 62 instructions on the law here.
17 It's going to take me over an hour to read them all to you.

18 You will have copies of these with you in the
19 jury room. So don't get too concerned if you don't fully
20 understand the instruction as I'm reading it. I think
21 you'll be able to pick up the drift, and you'll be able to
22 examine them directly in the jury room in the course of
23 your deliberations.

24 So I'll start with -- some of these repeat some
25 of what I've just said, but I'm going to read them verbatim

1 to you because that's what we do.

2 So the first instruction:

3 Members of the jury: Now, that you've heard all
4 of the evidence and the arguments of the attorneys, it is
5 my duty to instruct you as to the law of the case.

6 Each of you will receive a copy of these
7 instructions that you may take with you to the jury room to
8 consult during your deliberations.

9 You must not infer from these instructions or
10 from anything I may say or do as indicating that I have an
11 opinion regarding the evidence or what your verdict should
12 be.

13 It is your duty to find the facts from all the
14 evidence in the case. To those facts you will apply the
15 law as I give it to you. You must follow the law as I give
16 it to you whether you agree with it or not. And you must
17 not be influenced by any personal likes or dislikes,
18 opinions, prejudices, or sympathy. That means that you
19 must decide the case solely on the evidence before you.
20 You will recall that you took an oath to do so.

21 In following my instructions, you must follow
22 all of them and not single out some and ignore others; they
23 are all important.

24 Instruction Number 2.

25 You have seen references to several "Oracle"

1 entities. Oracle America, Inc., develops and licenses
2 certain intellectual property and software, and provides
3 software support services. Oracle America, Inc., is the
4 successor to Oracle USA, Inc., as well as certain companies
5 that were formerly part of PeopleSoft, JD Edwards, and
6 Siebel Systems. Oracle International Corporation is the
7 owner or exclusive licensee of the copyrights at issue in
8 this case. In these instructions, I sometime refer to
9 these entities as "Oracle" or "plaintiff(s)."

10 However, as part of your deliberations, I inform
11 you that you must find for each plaintiff separately as to
12 those claims that a plaintiff alleges. For example, only
13 some claims are alleged by Oracle International Corporation
14 while other claims are alleged by Oracle America, Inc.
15 When necessary in these instructions, I will refer to the
16 specific plaintiff or plaintiffs alleging a particular
17 claim.

18 Instruction Number 3.

19 Plaintiff Oracle America, Inc., plaintiff Oracle
20 International Corporation, and defendant Rimini Street are
21 corporations. Corporations are entitled to the same fair
22 and impartial treatment that you would give to an
23 individual. You must decide this case with the same
24 fairness that you would use if you were deciding the case
25 between individuals.

1 Instruction Number 4.

2 The evidence you are to consider in deciding
3 what the facts are consists of:

4 The sworn testimony of any witness;

5 The exhibits which are received into evidence;
6 and

7 Any facts to which the lawyers have agreed.

8 Counsel, are the jury books prepared for the
9 jury?

10 COURTROOM ADMINISTRATOR: Yes. I have them.

11 THE COURT: They are? All right.

12 I would tell you, ladies and gentlemen, there
13 have been a number of stipulations of fact that have been
14 entered by the parties that have shortened some of the
15 processes that we would have had to go through here in the
16 trial.

17 You'll have those what we call jury books in the
18 jury room with you, and they list facts that have been
19 stipulated to, they list different itemized listings of
20 material items that are significant in this case.

21 They are self-explanatory to a large part, and
22 you will have those in the jury room, a copy for each one
23 of you to refer to.

24 Instruction Number 5.

25 In reaching your verdict, you may consider only

1 the testimony and exhibits received into evidence. Certain
2 things are not evidence, and you may not consider them in
3 deciding what the facts are. I will list them for you:

4 1. Arguments and statements by lawyers are not
5 evidence. The lawyers are not witnesses. What they have
6 said in their opening statements, will say in their closing
7 arguments, and at other times, is intended to help you
8 interpret the evidence, but it is not evidence. If the
9 facts as you remember them differ from the way the lawyers
10 have stated them, your memory of the facts controls.

11 2. Questions and objections by lawyers are not
12 evidence. Attorneys have a duty to their clients to object
13 when they believe a question is improper under the rules of
14 evidence. But you should not be influenced by the
15 objection or by the Court's ruling on it.

16 3. Testimony that has been excluded or
17 stricken, and that you've been instructed to disregard is
18 not evidence and must not be considered. In addition,
19 sometimes testimony and exhibits are received only for a
20 limited purpose; when I have given a limiting instruction
21 you must follow it.

22 4. Anything you have seen or heard when the
23 Court was not in session is not evidence. You are to
24 decide the case solely on the evidence received at the
25 trial.

1 5. Any notes taken by you or other jurors are
2 not evidence.

3 Instruction Number 6.

4 Evidence may be direct or circumstantial.
5 Direct evidence is direct proof of a fact, such as
6 testimony by a witness about what that witness personally
7 saw or heard or did. Circumstantial evidence is proof of
8 one or more facts from which you could find another fact.
9 You should consider both kinds of evidence.

10 The law makes no distinction between the weight
11 to be given to either direct or circumstantial evidence.
12 It is for you to decide how much weight to give to any
13 evidence.

14 Instruction Number 7.

15 The weight of the evidence as to a fact does not
16 necessarily depend on the number of witnesses who testify.

17 During the course of trial, testimony was read
18 to you from depositions and played for you from videotapes
19 of depositions. A deposition is the sworn testimony of a
20 witness taken before trial. The witness is placed under
21 oath to tell the truth, and lawyers for each party may ask
22 questions. The questions and answers are preserved in
23 writing, or in some cases on videotape.

24 You should consider deposition testimony,
25 presented to you in court either in writing or played on

1 videotape, in the same way as if the witness had been
2 present to testify.

3 Instruction Number 8.

4 Some evidence may be admitted for a limited
5 purpose only. When I instruct that an item of evidence has
6 been admitted for a limited purpose, you must consider it
7 only for that limited purpose and for no other.

8 Instruction Number 9.

9 There are rules of evidence that control what
10 can be received into evidence. When a lawyer asks a
11 question or offers an exhibit into evidence and a lawyer on
12 the other side thinks that it's not permitted by the rules
13 of evidence, that lawyer may object. If I overruled the
14 objection, the question may be answered or the exhibit
15 received. If I sustained the objection, the question
16 cannot be answered, and the exhibit was not received.
17 Whenever I sustained an objection to a question, you must
18 ignore the question and must not guess what the answer
19 might have been.

20 Sometimes I ordered that evidence be stricken
21 from the record and that you disregard or ignore the
22 evidence. That means that when you are deciding the case,
23 you must not consider the evidence that I told you to
24 disregard.

25 Instruction Number 10.

1 In deciding the facts in this case, you may have
2 to decide which testimony to believe and which testimony
3 not to believe. You may believe everything a witness says,
4 or part of it, or none of it. Proof of a fact does not
5 necessarily depend on the number of witnesses who testify
6 about it. In considering the testimony of any witness, you
7 may take into account.

8 1. The opportunity and ability of the witness
9 to see or hear or know the things testified to;

10 2. The witness's memory;

11 3. The witness's manner while testifying;

12 4. The witness's interest in the outcome of the
13 case and any bias or prejudice;

14 5. Whether other evidence contradicted the
15 witness's testimony;

16 6. The reasonableness of the witness's
17 testimony in light of all the evidence; and

18 7. Any other factors that bear on
19 believability.

20 The weight of the evidence as to a fact does not
21 necessarily depend on the number of witnesses who testify
22 about it.

23 Instruction Number 11.

24 Some witnesses, because of education or
25 experience, are permitted to state opinions and the reasons

1 for those opinions.

2 Opinion testimony should be judged like any
3 other testimony. You may accept it or reject it, and give
4 it as much weight as you think it deserves, considering the
5 witness's education and experience, the reasons given for
6 the opinion, and all the other evidence in the case.

7 Instruction Number 12.

8 The parties have agreed to certain facts. The
9 agreement is known as a stipulation. You should treat all
10 these facts as already approved. Your juror notebook
11 identifies these facts.

12 Instruction Number 13.

13 Certain charts, summaries, and slides not
14 received in evidence have been shown to you in order to
15 help you explain the contents of books, records, documents,
16 or other evidence in the case. They are not themselves
17 evidence or proof of any facts. If they do not correctly
18 reflect the facts or figures shown by evidence in the case,
19 you should disregard these charts and summaries and
20 determine the facts from the underlying evidence.

21 Instruction Number 14.

22 Certain charts and summaries have been received
23 into evidence to illustrate information brought out in the
24 trial. Charts and summaries are only as good as the
25 underlying evidence that supports them. You should,

1 therefore, give them only such weight as you think the
2 underlying evidence deserves.

3 Instruction 15.

4 Evidence has been presented to you in the form
5 of an answer of one of the parties to a written
6 interrogatory submitted by the other side. These answers
7 were given in writing and under oath, before the actual
8 trial, in response to a question that was submitted in
9 writing under established court procedures. You should
10 consider the answer, insofar as possible, in the same way
11 as if it was made from the witness stand.

12 Instruction 16.

13 Certain documents received in evidence may have
14 portions blocked out or otherwise redacted. Do not
15 speculate or consider what would have been included in the
16 document absent those redactions. You should not consider
17 the redactions during your deliberations.

18 Instruction 17.

19 When a party has the burden of proof on any
20 claim or affirmative defense by a preponderance of the
21 evidence, it means you must be persuaded by the evidence
22 that the claim or affirmative defense is more probably true
23 than not true.

24 You should base your decision on all of the
25 evidence, regardless of which party presented it.

1 Instruction 18.

2 When a party has the burden of proving any claim
3 or defense by clear and convincing evidence, it means you
4 must be persuaded by the evidence that the claim or defense
5 is highly probable. This is a higher standard of proof
6 than proof by a preponderance of the evidence. You should
7 base your decision on all of the evidence, regardless of
8 which party presented it.

9 Instruction 19.

10 Rimini Street has a location on its computer
11 systems that some employees refer to as the "software
12 library."

13 The location contained a complete copy of at
14 least 31 of Oracle's registered, copyrighted works. A list
15 of the 31 works is included in your juror notebook. Rimini
16 breached its duty to preserve relevant evidence when it
17 deleted certain material in the software library in
18 January 2010.

19 You may, but are not required, to infer that the
20 deleted material included evidence that was favorable to
21 Oracle's claims and unfavorable to Rimini Street's defenses
22 in this case.

23 Instruction Number 20.

24 You have heard evidence and argument concerning
25 a company called TomorrowNow.

1 You may not use evidence concerning TomorrowNow
2 to infer that, because Seth Ravin was at one time
3 associated with TomorrowNow, he, Rimini Street, or any
4 individual employed by Rimini Street did, or was more
5 likely to have done, the things that Oracle contends.

6 Instruction Number 21.

7 Copyright is the exclusive right to copy. The
8 right to copy includes the exclusive rights to:

- 9 1. Authorize, or make additional copies, or
10 otherwise reproduce the copyrighted work;
11 2. Prepare derivative works based upon the
12 copyrighted work by adapting or transforming it; and
13 3. Distribute copies of either the copyrighted
14 work or derivative work.

15 The owner or exclusive licensee of a copyright
16 holds these exclusive rights. "Owner" refers to the author
17 of the work, or one who has been assigned the ownership of
18 exclusive rights in the work. In general, copyright law
19 protects against the reproduction, adaptation, or
20 distribution of the owner's copyrighted work without the
21 owner's permission. An owner may enforce these rights to
22 exclude others in an action for copyright infringement.

23 Even though one may acquire a copy of the
24 copyrighted work, the copyright owner retains certain
25 rights and control of that copy, including uses that may

1 result in additional copies or alterations of the work.

2 The term "derivative work" refers to a work
3 based on one or more preexisting works, where the
4 preexisting work is recast, transformed or adapted.
5 Accordingly, the owner of a copyrighted work is entitled to
6 exclude others from recasting, transforming or adapting the
7 copyrighted work without the owner's permission.

8 An "original work" or "original element" is one
9 that has been created independently by the author (that is,
10 the author did not copy it) using at least minimal
11 creativity.

12 Instruction Number 22.

13 In this action, Oracle International Corporation
14 contends that defendant Rimini Street is liable for direct
15 copyright infringement of Oracle International
16 Corporation's PeopleSoft, Oracle Database, JD Edwards, and
17 Siebel software and support material. Oracle International
18 Corporation also contends that defendant Seth Ravin is
19 liable for contributory and/or vicarious copyright
20 infringement.

21 Defendant Rimini Street denies infringing
22 Oracle's copyrights and asserts an affirmative license
23 defense as to the conduct at issue, which I will explain in
24 more detail.

25 You are informed that the Court has previously

1 ruled as a matter of law that defendant Rimini Street
2 engaged in copyright infringement of Oracle International
3 Corporation's Oracle Database and PeopleSoft software
4 applications. However, the Court has not ruled on whether
5 defendant Rimini Street engaged in copyright infringement
6 of Oracle International Corporation's JD Edwards and Siebel
7 software and related documents or Oracle International
8 Corporation's PeopleSoft documentation. PeopleSoft
9 documentation is different from the PeopleSoft software
10 applications. The PeopleSoft software applications are the
11 actual computer programs installed on a customer's computer
12 system. In contrast, the PeopleSoft documentation are
13 related support materials - in the form of technical
14 manuals, installation guides, and other copied documents -
15 that help a customer utilize and install the PeopleSoft
16 software application.

17 It will be up to you, the jury, to determine
18 whether defendant Rimini Street is liable for copyright
19 infringement of Oracle International Corporation's JD
20 Edwards and Siebel software applications and related
21 documentation as well as Oracle International Corporation's
22 PeopleSoft documentation.

23 It will also be up to you to determine whether
24 defendant Seth Ravin is liable for contributory and/or
25 vicarious copyright infringement for all copyright

1 infringement engaged in by defendant Rimini Street.

2 Finally, it will be up to you to determine the
3 amount of damages to award Oracle International Corporation
4 for all copyright infringement engaged in by defendant
5 Rimini Street. I will now instruct you on the law on these
6 issues to help you in your deliberations.

7 Instruction Number 23.

8 To prevail on its claim for direct copyright
9 infringement as to JD Edwards and Siebel software
10 applications and related documentation and PeopleSoft
11 documentation, Oracle International Corporation must prove
12 the following by a preponderance of the evidence:

13 1. Oracle International Corporation is the
14 owner or exclusive licensee of a valid copyright in an
15 original work;

16 2. Rimini Street copied original elements from,
17 created derivative works from, or distributed the original
18 work; and

19 3. Rimini Street did not have permission to
20 copy the original elements of the copyrighted work.

21 The parties have agreed that Oracle
22 International Corporation owns or is the exclusive licensee
23 of certain registered copyrighted works related to the JD
24 Edwards and Siebel software applications and related
25 documentation and PeopleSoft documentation also at issue in

1 this action, which means that Oracle International
2 Corporation has proven the first element for these
3 registered works.

4 The parties have also agreed, as stated in your
5 juror notebook, that defendant Rimini Street copied the JD
6 Edwards and Siebel software applications and related
7 documentation as well as the positive documentation at
8 issue in this action. This means that Oracle International
9 Corporation has also proven the second element for these
10 copyrighted works.

11 I inform you that Oracle International
12 Corporation's claim for direct copyright infringement
13 related to the PeopleSoft documentation is separate from,
14 and not to be confused with, the PeopleSoft copyrighted
15 software application which the Court has previously ruled
16 was infringed by Rimini Street as a matter of law.

17 It is up to you to determine whether defendant
18 Rimini Street had an express license to copy these
19 copyrighted works of JD Edwards and Siebel software
20 applications and related documentation and PeopleSoft
21 documentation. I will explain this issue in more detail in
22 another instruction.

23 Instruction 23.

24 If you find that Rimini Street had an express
25 license to make the copies that it did of JD Edwards and

1 Siebel software applications and related documentation and
2 PeopleSoft documentation, then you must find in favor of
3 Rimini Street and against Oracle International Corporation
4 on Oracle International Corporation's claim for direct
5 copyright infringement. If, however, you find that Rimini
6 Street did not have an express license to make the copies
7 that it did of JD Edwards and Siebel software applications
8 and related documentation and PeopleSoft documentation, you
9 must find in favor of Oracle International Corporation and
10 against Rimini Street on Oracle International Corporation's
11 claim of direct copyright infringement.

12 Instruction Number 24.

13 Defendant Rimini Street asserts an express
14 license defense to Oracle International's claim of direct
15 copyright infringement.

16 Where a defendant asserts an express license
17 defense to copyright infringement, the defendant has the
18 initial burden to identify any license provision or
19 provisions that it believes excuses the infringement. If a
20 defendant satisfies this burden, then it becomes the
21 plaintiffs' burden to prove by a preponderance of the
22 evidence that defendants' copying or other infringement was
23 not authorized by the license provision or provisions.

24 In this action, Oracle enters into written
25 software license agreements with its customers that allow

1 the customers to use Oracle International Corporation's
2 copyrighted software and have access to support materials
3 for that software. It is undisputed that defendant Rimini
4 Street did not have its own license with Oracle relevant to
5 any of the issues that you are to decide. Instead,
6 defendant Rimini Street asserts that its own client's
7 software license agreements with Oracle authorized any
8 copying Rimini Street engaged in as it relates to Oracle
9 International Corporation's JD Edwards and Siebel software
10 applications and related documentation and PeopleSoft
11 documentation at issue in this action. Under the law
12 defendant Rimini Street is permitted to assert those
13 software license agreements as a defense.

14 It is up to you to determine whether defendant
15 Rimini Street's copying of Oracle International
16 Corporation's JD Edwards and Siebel software applications
17 and related documentation and PeopleSoft documentation was
18 authorized by the client's software license agreements with
19 Oracle. To help you in your deliberations, the Court has
20 previously interpreted the relevant licenses as a matter of
21 law.

22 JD Edwards Software License Agreements.

23 As to JD Edwards software license agreements you
24 are informed that the Court has previously ruled as a
25 matter of law that the JD Edwards software license

1 agreements authorized a third party like Rimini Street -
2 who was engaged by a licensee to provide support or other
3 services - to copy the JD Edwards software application and
4 related documentation onto its computer systems to the
5 extent necessary for the customer's archival needs and to
6 support the customer's use. An archival copy of the
7 software application and documentation is an unmodified
8 copy of the original software application and documentation
9 for use in the event that the production copy of the
10 software, the copy used on a customer's systems, is
11 corrupted or lost. This provision does not mean that a
12 third party like Rimini Street is authorized to make copies
13 of the JD Edwards software application and documentation
14 to, among other things, access the software's source code
15 to carry out development and testing of software updates,
16 to make modifications to the software, or to use the
17 customer's software or support materials to support other
18 customers.

19 If you find that the copies of the JD Edwards
20 software application and documentation housed on Rimini
21 Street's servers were used solely for the customer's
22 archival needs and to support the customer's use, then that
23 use is authorized by the JD Edwards software license
24 agreement and you should find in favor of defendant Rimini
25 Street and against Oracle International Corporation on

1 Oracle International Corporation's claim for direct
2 copyright infringement as it relates to the JD Edwards
3 copyrighted works.

4 If, on the other hand, you find that the copies
5 of the JD Edwards software application and documentation
6 housed on Rimini Street's servers were used for purposes
7 other than the customer's archival needs or to support the
8 customer's use, then that use is outside the scope of the
9 JD Edwards software license agreement and you should find
10 in favor of Oracle International Corporation and against
11 defendant Rimini Street on Oracle International
12 Corporation's claim for direct copyright infringement as it
13 relates to the JD Edwards copyrighted works.

14 Siebel Software License Agreements.

15 As to the Siebel software license agreements you
16 are informed that the Court has ruled as a matter of law
17 that the Siebel software license agreements authorized a
18 third party like Rimini Street to make a reasonable number
19 of copies of the Siebel software application and related
20 documentation into the third party's own computer systems
21 solely for the customers archive or emergency backup
22 purposes or disaster recovery and related testing. As
23 stated previously, an archival copy of the software and
24 documentation is an unmodified copy of the original
25 software and documentation for use in the event that

1 production copy of the software - the copy used on a
2 customer's system - is corrupted or lost. This provision
3 does not mean that a third party like Rimini Street is
4 authorized to make copies of the Siebel software and
5 documentation to, among other things, access the software's
6 source code to carry out modification, development and
7 testing of the software not related to archive, emergency
8 backup, or disaster recovery purposes, or to use the
9 customer's software or support materials to support other
10 customers.

11 If you find that the copies of the Siebel
12 software application and related documentation housed on
13 Rimini Street's servers were used solely for archive or
14 emergency backup purposes or disaster recovery and related
15 testing, then that use is authorized by the Siebel software
16 license agreement and you should find in favor of defendant
17 Rimini Street and against Oracle International Corporation
18 on Oracle International Corporation's claim for direct
19 copyright infringement as it relates to the Siebel
20 copyrighted works.

21 If, on the other hand, you find that the copies
22 of the Siebel software application and related
23 documentation housed on Rimini Street's servers were used
24 for purposes other than archive or emergency backup
25 purposes or disaster recovery and related testing, then

1 that use is outside the scope of the Siebel software
2 license agreement and you should find in favor of Oracle
3 International Corporation and against defendant Rimini
4 Street on Oracle International Corporation's claim for
5 direct copyright infringement as it relates to the Siebel
6 copyrighted works.

7 PeopleSoft License Agreements.

8 You have already been informed that the Court
9 has ruled as a matter of law the defendant Rimini Street
10 engaged in copyright infringement of certain of Oracle
11 International Corporation's PeopleSoft software
12 applications. However, the Court has not ruled on the
13 issue of copyright infringement as it relates to Oracle
14 International Corporation's PeopleSoft documentation at
15 issue in this action.

16 You are informed that the Court has previously
17 ruled as a matter of law that defendant Rimini Street
18 engaged in copyright infringement of Oracle International
19 Corporation's PeopleSoft applications.

20 One little typing correction there.

21 The PeopleSoft software licenses prohibited
22 Rimini Street from copying or preparing derivative works
23 from PeopleSoft software other than to support the specific
24 licensee's own internal data processing operations on the
25 licensee's own computer systems. Any copying or

1 preparation of derivative works outside the scope of those
2 limitations was prohibited by the license agreements. This
3 means that the licenses prohibited Rimini Street from
4 copying or preparing derivative works from PeopleSoft
5 software on Rimini Street's computer systems. It also
6 means that the licenses prohibited Rimini Street from
7 copying or preparing derivative works from PeopleSoft
8 software in developing or testing software updates for
9 other Rimini Street customers.

10 As to the PeopleSoft software license agreements
11 you are informed that the Court rules as a matter of law
12 that the PeopleSoft software license agreements authorized
13 a third party like Rimini Street to make a reasonable
14 number of copies of the PeopleSoft documentation solely for
15 the customer's internal use and at the customer's
16 facilities. This provision does not authorize a third
17 party like Rimini Street to copy, distribute, or use the
18 PeopleSoft documentation at its facilities or to develop or
19 test software updates for other customers.

20 If you find that copies of the PeopleSoft
21 documentation were solely at the customer's facilities and
22 were used solely for the customer's internal use, then that
23 use is authorized by the PeopleSoft software license
24 agreement and you should find in favor of defendant Rimini
25 Street and against Oracle International Corporation on

1 Oracle International Corporation's claim for direct
2 copyright infringement as it relates to the PeopleSoft
3 documentation and support materials.

4 If, on the other hand, you find that the copies
5 of the PeopleSoft documentation were either at Rimini
6 Street's facilities or were used for purposes other than
7 solely for the customer's internal use then that use is
8 outside the scope of the PeopleSoft software license
9 agreements and you should find in favor of Oracle
10 International Corporation and against defendant Rimini
11 Street on Oracle International's claim for direct copyright
12 infringement as it relates to the PeopleSoft documentation
13 and support materials.

14 Instruction Number 25.

15 The license agreements between Oracle and its
16 customers are complete contracts. The Court has explained
17 the meaning of those agreements to you. You may not
18 consider other evidence to add or to change the meaning of
19 these agreements.

20 Instruction Number 26.

21 A defendant may be liable for copyright
22 infringement engaged in by another. Oracle International
23 Corporation contends that Seth Ravin is liable for Rimini
24 Street's copyright infringement under the doctrine of
25 "contributory infringement." Therefore, you must also

1 consider whether Seth Ravin is liable for contributory
2 infringement.

3 To prevail on contributory infringement against
4 Seth Ravin, each of the following elements must be proved
5 by a preponderance of the evidence:

6 1. Seth Ravin knew or had reason to know of
7 Rimini Street's infringing activity; and

8 2. Seth Ravin intentionally induced or
9 materially contributed to that infringing activity.

10 If you find that these elements have been proved
11 by a preponderance of the evidence, you should find for
12 Oracle International Corporation and against Seth Ravin on
13 the copyright infringement claims as to contributory
14 infringement. If, on the other hand, if either of these
15 elements have failed to have been proved, you should find
16 for Seth Ravin and against Oracle International Corporation
17 on the copyright infringement claim as to contributory
18 infringement.

19 Instruction Number 27.

20 In addition to contributory liability, a
21 defendant may also be liable for copyright infringement
22 committed by another defendant based on "vicarious
23 liability."

24 To prevail on vicarious infringement against
25 Seth Ravin, each of the following elements must be proved

1 by a preponderance of the evidence:

2 1. Seth Ravin profited directly from Rimini
3 Street's infringing activity;

4 2. Seth Ravin had the right and ability to
5 supervise or control Rimini Street's infringing activity;
6 and

7 3. Seth Ravin failed to exercise that right and
8 ability.

9 If you find that each of these elements has been
10 proved by a preponderance of the evidence, you should find
11 for Oracle International Corporation and against Seth Ravin
12 on the copyright infringement claim as to vicarious
13 infringement. On the other hand, if any of these elements
14 have not been proved, you should find for Seth Ravin and
15 against Oracle International Corporation on the copyright
16 infringement claim as to vicarious infringement.

17 Instruction Number 28.

18 You must determine Oracle International
19 Corporation's damages resulting from defendant Rimini
20 Street's copyright infringement. Oracle International
21 Corporation is entitled to recover either the actual
22 damages suffered as a result of the infringement or
23 statutory damages established by the Copyright Act. You
24 will be asked to determine both Oracle International
25 Corporation's actual damages as well as statutory damages

1 under the Copyright Act. Oracle International Corporation
2 must prove damages by a preponderance of the evidence.

3 As to the measure of its actual damages, Oracle
4 International Corporation, as the plaintiff, has the right
5 to seek to recover either the fair market value of a
6 license for the rights infringed or its lost profits, not
7 both. You must make the determination of which type of
8 damages to award to Oracle International Corporation if you
9 determine those damages are proved by a preponderance of
10 the evidence.

11 If you award Oracle International Corporation
12 actual damages based on its lost profits, then Oracle
13 International Corporation is also entitled to recover any
14 profits that defendant Rimini Street made that is
15 attributable to that infringement and that is not
16 duplicative of any lost profits that you award to Oracle
17 International Corporation. In other words, for any
18 particular customer, Oracle may recover either its lost
19 profits or Rimini Street's infringer's profits, but not
20 both, for that customer.

21 If you award Oracle International Corporation
22 actual damages based on the fair market value of a license
23 for the rights infringed, that award takes into account
24 defendant Rimini Street's profits attributable to its
25 infringement and Oracle International Corporation is not

1 entitled to any additional award.

2 Regardless of which type of actual damages you
3 choose to award Oracle International Corporation, and even
4 if you determine that no measure of actual damages has been
5 proven, you must also make a determination of the amount of
6 statutory damages Oracle International Corporation is
7 entitled to under the Copyright Act. When you consider
8 Oracle International Corporation's statutory damages you
9 must not consider the amount awarded as actual damages.
10 They are separate and distinct damages and do not relate to
11 each other. All of these damages will now be explained to
12 you.

13 Instruction 29. Copyright infringement.

14 While there is no precise formula for
15 determining actual damages, your award must be based on
16 evidence, not on speculation, guesswork, or conjecture.

17 Determining the amount of Oracle International
18 Corporation's actual damages may involve some uncertainty,
19 and Oracle is not required to establish the amount of its
20 actual damages with precision.

21 Instruction Number 30.

22 For Oracle International Corporation to recover
23 actual damages, it must prove that the infringement caused
24 damages, that is, that there is a causal relationship
25 between Oracle International Corporation's losses and

1 Rimini Street's infringement. Infringement caused damages
2 if the infringement was a "substantial factor" in causing
3 the damages.

4 A substantial factor is a factor that a
5 reasonable person would consider to have contributed. It
6 must be more than a remote or trivial factor. It does not
7 have to be the only cause of harm. Conduct is not a
8 substantial factor in causing harm if the same harm would
9 have occurred without that conduct. This means that if a
10 client left Oracle International Corporation for reasons
11 unrelated to Rimini Street's infringement, there is no
12 causal relationship and therefore no lost profit damages as
13 to that client.

14 Instruction 31.

15 If you decide that the best measure of Oracle
16 International Corporation's actual damages is lost profits,
17 you must determine what profits Oracle International
18 Corporation proved that it would have made without the
19 infringement by Rimini Street. Lost profits are the
20 revenue Oracle International Corporation would have made
21 without the infringement, less any additional expenses
22 Oracle International Corporation would have incurred in
23 making those profits.

24 To recover lost profits, Oracle International
25 Corporation must prove by a preponderance of the evidence

1 that:

2 1. Rimini Street caused such damages; and

3 2. The amount. You may not guess the amount or
4 rely on speculative evidence to calculate lost profits.

5 Instruction Number 32 -- and I'm going to -- do
6 you have some water, Dionna?

7 Bear with me.

8 Instruction Number 32.

9 If you determine that lost profits are the best
10 measure of Oracle International Corporation's actual
11 damages, then you must also determine the amount of lost
12 profits, if any, made by the defendant Rimini Street that
13 are directly attributable to the infringement and were not
14 taken into account in computing lost profits.

15 You may make an award of defendant Rimini
16 Street's profits only if you find that Oracle International
17 Corporation showed a causal relationship between the
18 infringement and the profits generated directly or
19 indirectly from the infringement.

20 Rimini Street's profits are determined by
21 subtracting all of Rimini Street's expenses from Rimini
22 Street's gross revenue. If Rimini Street's expenses exceed
23 its gross revenue, then there are no Rimini Street profits
24 for you to award Oracle International Corporation.

25 For purposes of determining Rimini Street's

1 profits, gross revenue is all of Rimini Street's receipts
2 from the use and sale of a product or service associated
3 with the infringement. Oracle International Corporation
4 has the burden of proving Rimini Street's gross revenue by
5 infringement by a preponderance of the evidence.

6 Rimini Street's expenses are all operating
7 costs, overhead costs, and production costs incurred in
8 producing Rimini Street's gross revenue. Rimini Street
9 bears the burden of proving its expenses by a preponderance
10 of the evidence.

11 Unless you find that a portion of the profit
12 from the use of copyrighted works is attributable to
13 factors other than use of the copyrights works, all of the
14 profit is to be attributed to the infringement. Rimini
15 Street has the burden of proving the portion of the profit,
16 if any, attributable to factors other than infringing the
17 copyrighted works.

18 Instruction Number 33.

19 If you determine that the best measure of Oracle
20 International Corporation's actual damages is a fair market
21 value license, you must determine the amount of a fair
22 market value license between Oracle International
23 Corporation and Rimini Street. The fair market value
24 license is the amount a willing buyer would have been
25 reasonably required to pay a willing seller at the time of

1 the infringement for the actual use made by Rimini Street
2 of Oracle International Corporation's copyrighted works.

3 In determining a fair market value license, you
4 must consider the entire scope of the infringement.
5 Further, you should consider all of the information known
6 to and all of the expectations of the parties on the dates
7 of the hypothetical negotiations, which are the dates on
8 which infringement began.

9 You must determine what would have been the
10 result of this negotiation in order to establish the fair
11 market value. The fair market value is an objective
12 measure of Oracle International Corporation's damages that
13 is meant to approximate the fair market value of a license
14 for all of the copyrights Rimini Street infringed,
15 calculated at the time of the infringement, which is the
16 period from 2006 through 2011.

17 The value of a hypothetical license is not
18 necessarily the amount that Rimini Street would have agreed
19 to pay, or that Oracle International Corporation would have
20 actually agreed to accept.

21 You may consider evidence of events and facts
22 that happened after the date of the hypothetical
23 negotiation only to the extent that it proves insight into
24 the expectations of the parties at the time the
25 infringement first began, or insight into the amount a

1 willing buyer would have been reasonably required to pay a
2 willing seller at the time of the infringement.

3 Instruction Number 34.

4 Regardless of the amount of actual damages
5 awarded to Oracle International Corporation for defendant
6 Rimini Street's copyright infringement and regardless of
7 whether you chose to award Oracle International Corporation
8 lost profits or a fair market value license, you must also
9 determine the amount of statutory damages as established by
10 Congress in the Copyright Act for each work infringed. As
11 stated previously, you must not consider the amount awarded
12 to Oracle International Corporation for actual damages in
13 determining statutory damages.

14 The purpose of statutory damages is to penalize
15 the infringer and deter future violations of copyright law.

16 The amount you may award as statutory damages is
17 not less than \$750 and not more than \$30,000 for each work
18 that you conclude was infringed.

19 However, if you find that the infringement was
20 innocent, you may award as little as \$200 for each work
21 innocently infringed.

22 Similarly, if you find that infringement was
23 willful, you may award as much as \$150,000 for each work
24 willfully infringed.

25 I will now explain to you what constitutes

1 innocent infringement and what constitutes willful
2 infringement.

3 Instruction Number 35.

4 An infringement is considered innocent when the
5 defendant has proved both of the following elements by a
6 preponderance of the evidence:

7 1. The defendant was not aware that its acts
8 constituted infringement of the copyright; and

9 2. The defendant had no reason to believe that
10 its acts constituted an infringement of the copyright.

11 Instruction Number 36.

12 An infringement is considered willful when the
13 plaintiff has proved both of the following elements by a
14 preponderance of the evidence:

15 1. The defendant engaged in acts that infringed
16 the copyright; and

17 2. The defendant knew that those acts infringed
18 the copyright.

19 Instruction Number 45 -- excuse me, Instruction
20 Number 37.

21 In addition to its other claims, Oracle America
22 contends that Rimini Street and Seth Ravin induced
23 customers to breach their contracts with Oracle America.
24 Specifically, Oracle America contends that the terms of use
25 on its website are contracts with its customers. Oracle

1 America does not claim that Rimini Street or Seth Ravin
2 caused customers to breach their software license
3 agreements with Oracle America. Oracle America contends
4 that Rimini Street and Seth Ravin intentionally caused
5 Oracle America customers to breach such contracts with
6 Oracle America.

7 To prevail on this claim in the circumstances of
8 this case, Oracle America must prove each of the following
9 for each such contract by a preponderance of the evidence:

10 1. A valid contract existed between Oracle
11 America and a customer;

12 2. Rimini Street and/or Seth Ravin knew the
13 contract existed;

14 3. Rimini Street and/or Seth Ravin intended to
15 cause Oracle America's customer to breach its contract with
16 Oracle America;

17 4. Rimini Street and/or Seth Ravin engaged in
18 conduct that was wanton, malicious, and unjustifiable;

19 5. Rimini Street and/or Seth Ravin's conduct
20 caused the customer to breach the contract;

21 6. Oracle America was directly harmed; and

22 7. Rimini Street and/or Seth Ravin's improper
23 conduct was a substantial factor in causing Oracle America
24 harm.

25 The "unjustifiable" conduct required for this

1 claim cannot include breach of contract or copyright
2 infringement. The unjustifiable conduct that Oracle
3 America alleges is related to alleged misrepresentations
4 made by Rimini Street. To satisfy this element, a
5 misrepresentation must be communicated to the customer, it
6 must be a false misrepresentation at the time it was made,
7 it must be made with knowledge or belief that it was false,
8 Rimini Street must have intended to induce the third party
9 to rely on that statement, and the third party must have in
10 fact relied on the statement.

11 If you find that Oracle America proved each of
12 these elements as to Rimini Street and/or Seth Ravin, you
13 should find for Oracle America and against Rimini Street
14 and/or Seth Ravin on the claim for inducing breach of
15 contract. If, on the other hand, Oracle America has failed
16 to prove any of these elements as to Rimini Street and/or
17 Seth Ravin, you should find for Rimini Street and/or Seth
18 Ravin and against Oracle America on the claim for inducing
19 breach of contract.

20 Instruction Number 38.

21 Oracle America and Oracle International
22 Corporation seeks -- seek to recover damages based upon a
23 claim of intentional interference with prospective economic
24 advantage.

25 In order for you to find for Oracle America

1 and/or Oracle International Corporation, you must find by a
2 preponderance of the evidence that:

3 1. Oracle America and/or Oracle International
4 Corporation had an expectancy and a prospective contractual
5 relationship with the customer;

6 2. Rimini Street and/or Seth Ravin knew of the
7 existence of the relationship;

8 3. Rimini Street and/or Seth Ravin engaged in
9 unlawful and improper conduct;

10 4. By engaging in this conduct, Rimini Street
11 and/or Seth Ravin intended to disrupt the relationship;

12 5. Rimini Street and/or Seth Ravin's conduct
13 was not privileged or justified;

14 6. The relationship was disrupted as a result
15 of such conduct;

16 7. Oracle America and/or Oracle International
17 Corporation was harmed; and

18 8. Rimini Street and/or Seth Ravin's unlawful
19 and improper conduct was a substantial factor in causing
20 Oracle America and/or Oracle International Corporation
21 harm.

22 "Unlawful and improper misconduct" does not
23 include breach of contract or copyright infringement. The
24 only unlawful and improper misconduct that Oracle America
25 and Oracle International Corporation claims are related to

1 alleged misrepresentations made by Rimini Street. To
2 satisfy this element, a misrepresentation must be
3 communicated to the customer, it must be a false
4 representation at the time it was made, it must be made
5 with knowledge or belief it was false, Rimini Street must
6 have intended to induce the third party to rely on that
7 statement, and the third party must have in fact relied on
8 the statement. You must decide whether Oracle America
9 and/or Oracle International Corporation has established any
10 actionable misrepresentations and, if so, whether it is
11 more likely than not that those misrepresentations were the
12 specific cause of harm.

13 If you find that Oracle America and/or Oracle
14 International Corporation proved each of these elements as
15 to Rimini Street and/or Seth Ravin, you should find for
16 Oracle America and/or Oracle International Corporation and
17 against Rimini Street and/or Seth Ravin on the claim for
18 intentional interference with prospective economic
19 advantage. If, on the other hand, Oracle America and/or
20 Oracle International Corporation have failed to prove any
21 of these elements as to Rimini Street and/or Seth Ravin,
22 you should find for Rimini Street and/or Seth Ravin and
23 against Oracle America and/or Oracle International
24 Corporation on the claim for intentional interference with
25 prospective economic advantage.

1 Instruction Number 39.

2 For Oracle America and/or Oracle International
3 Corporation to prevail on its claim for intentional
4 interference with prospective economic advantage, you must
5 find that Oracle America and/or Oracle International
6 Corporation had expectancies in prospective contractual
7 relationships with its customers at the time of defendants'
8 conduct.

9 And unexpected -- excuse me, an expectancy need
10 not be evidenced by a contract. It is sufficient if you
11 find from the evidence that there were either prior
12 dealings or a prior course of conduct between Oracle
13 America and/or Oracle International Corporation and
14 purchasers of Oracle America and/or Oracle International
15 Corporation's support services and software from which
16 there would be a reasonable expectation of future economic
17 benefit. Oracle America and/or Oracle International
18 Corporation must show this expected benefit with some
19 degree of specificity, such that it is a realistic
20 expectation, but it need not be shown with certainty
21 because prospective things in nature are necessarily
22 uncertain. The law requires more than a mere hope or
23 optimism; what is required is a reasonable likelihood or
24 probability.

25 Instruction Number 40.

1 For Oracle America to prevail on its claim for
2 inducing breach of contract and for Oracle America and/or
3 Oracle International Corporation to prevail on their claims
4 for intentional interference with prospective economic
5 advantage, you must also find that the defendant knew of
6 the existence of the contract or prospective relationship.
7 To have knowledge means that the defendant has information
8 concerning the contract or prospective defendant, which was
9 discovered by the defendant or was brought to defendant's
10 attention by others.

11 In this regard, knowledge may be found to exist
12 if, from the facts and circumstances of which the defendant
13 had knowledge, the defendants should have known of the
14 contract or prospective relationship.

15 Instruction Number 41.

16 For Oracle America to prevail on its claim for
17 inducing breach of contract and for Oracle America and/or
18 Oracle Corporation to prevail on their claims for
19 intentional interference with prospective economic
20 advantage, you must find intentional conduct by a
21 defendant. For purposes of these two claims, conduct is
22 intentional if done with the desire to disrupt the contract
23 or interfere with the relationship; or if it is done with
24 the belief that disruption or interference is substantially
25 certain to result.

1 Intent ordinarily may not be proved directly,
2 because there is no way of scrutinizing the operations of
3 the human mind. You may infer a person's intent from
4 conduct substantially certain to cause disruption or
5 interference, but you are not required to infer and should
6 consider all of the circumstances. You may consider any
7 statements made or acts done or omitted by a party whose
8 intent is an issue, and all of the facts and circumstances
9 that indicate the party's state of mind.

10 Furthermore, in determining the intention, the
11 law assumes that every person intends the natural
12 consequences of one's knowingly done acts. Thus, if you
13 find that the conduct of one or more of the defendants was
14 knowingly done, you may draw the inference and find, unless
15 the contrary appears from the evidence, that the defendant
16 intended all of the natural and probable consequences of
17 that conduct.

18 Instruction 42.

19 A substantial factor in causing harm is a factor
20 that a reasonable person would consider to have contributed
21 to the harm. It must be more than a remote or trivial
22 factor. It does not have to be the only cause of harm.

23 Conduct is not a substantial factor in causing
24 harm if the same harm would have occurred without that
25 conduct.

1 Instruction 43.

2 A party does not intentionally interfere with
3 prospective economic advantage when the party engages in
4 free competition. In other words, a party is free to
5 divert business to itself by all fair and reasonable means
6 because it is in the interest of the public that companies
7 compete against each other. Therefore, if you find the
8 following elements, then you must find that Rimini Street
9 and Seth Ravin did not intentionally interfere with Oracle
10 America and/or Oracle International Corporation's
11 prospective economic advantage:

12 1. The relationship concerns a matter involved
13 in the competition between Rimini Street and/or Seth Ravin
14 and Oracle America and/or Oracle International Corporation;

15 2. Rimini Street and/or Seth Ravin did not
16 employ wrongful means;

17 3. Rimini Street and/or Seth Ravin's action did
18 not create or continue an unlawful restraint of trade; and

19 4. Rimini Street and/or Seth Ravin's purpose
20 was at least in part to advance its interest in competing
21 with Oracle America and/or Oracle International
22 Corporation.

23 In other words, so long as Rimini Street and/or
24 Seth Ravin's motivation was at least partially to compete
25 with Oracle America and/or Oracle International

1 Corporation, and Rimini Street and/or Seth Ravin did not
2 employ wrongful means to compete with Oracle America and/or
3 Oracle International Corporation, then you must find that
4 Rimini Street and/or Seth Ravin acted in the interests of
5 free competition and did not intentionally interfere with
6 Oracle America and/or Oracle International Corporation's
7 prospective economic advantage.

8 Instruction Number 44.

9 If you find for Oracle America on one or more of
10 these two claims (intentional interference with prospective
11 economic advantage and inducing breach of contract) and/or
12 you find for Oracle International Corporation on the
13 intentional interference with prospective economic
14 advantage claim, you must determine compensatory damages.
15 Compensatory damages consist of the amount of money that
16 will reasonably and fairly compensate Oracle America and/or
17 Oracle International Corporation for any damage due to the
18 conduct that created liability on the claim. Oracle
19 America and Oracle International Corporation have the
20 burden to prove compensatory damages by a preponderance of
21 the evidence.

22 In determining compensatory damages on these
23 claims, you may consider whether Oracle America and/or
24 Oracle International Corporation suffered any measurable
25 loss of profits as a result of Rimini Street's and/or Seth

1 Ravin's conduct. In this case, Oracle America and Oracle
2 International Corporation contend that their business was
3 affected because of loss of profits they might have earned
4 but for Rimini Street's and/or Seth Ravin's conduct.

5 For lost profits to be recovered there must be a
6 reasonable basis for computing them. Profits are
7 determined by deducting all expenses from gross revenue.
8 Ordinarily it is sufficient for this purpose to show actual
9 past profits and losses. Although they cannot be taken as
10 an exact measure of future and anticipated profits, you,
11 the jury, should consider those past profits and losses
12 together with the uncertainties and contingencies by which
13 they probably would have been affected. Losses and profits
14 that are mere guesses, speculative, remote, or uncertain
15 should not be considered.

16 Damages, if any, should be restricted to such
17 losses, if any, as proved by facts from which their
18 existence is logically and legally inferable. The general
19 rule on the subject of damages is that all damages
20 resulting necessarily, immediately, and directly from the
21 wrong are recoverable, and not those that are contingent
22 and uncertain or mere speculation.

23 Instruction Number 44.

24 Although a qualified person may make estimates
25 concerning probable profits or losses of a going business,

1 you should, in weighing all such evidence, take into
2 consideration, among other things, the truth or falsity of
3 the basis of such estimates; the knowledge or lack of
4 knowledge of the witnesses of all of the conditions on
5 which the estimate is based; whether the facts assumed as a
6 basis for an estimate rest upon actual accounts and records
7 kept in the ordinary course of business rather than in
8 uncertain recollections; and knowledge of the witness in
9 the particular line of business about which the witness
10 testifies. From all of the evidence in this case bearing
11 on the subject, you should determine for yourselves the
12 probability or improbability and the amount of profits
13 anticipated by Oracle America and/or Oracle International
14 Corporation.

15 The difficulty or uncertainty in ascertaining or
16 measuring the precise amount of damages does not preclude
17 recovery, and you, the jury, should use your best judgment
18 in determining the amount of such damages, if any, based
19 upon the evidence. However, damages may not be based on
20 speculation and guesswork.

21 That Rimini Street or Seth Ravin did not
22 actually anticipate or contemplate that these losses would
23 occur is not a relevant factor for you to consider.

24 Instruction Number 45. Oracle America and --
25 I'm just going to refer to Oracle International Corporation

1 as Oracle International. I wish I had started that when I
2 began.

3 Oracle America and Oracle International contend
4 that Rimini Street and Seth Ravin violated two provisions
5 of the California Penal Code, section 502, known as the
6 California Computer Data Access and Fraud Act ("CDAFA"). I
7 will now instruct you on the law regarding the applicable
8 provisions of the CDAFA, and the damages you may award if
9 you find a CDAFA violation. If you find that a defendant
10 violated at least one of the CDAFA provisions that follow,
11 you should find for Oracle America and Oracle International
12 and against that defendant on the CDAFA claim.

13 Instruction 46.

14 For the purposes of assessing Oracle America and
15 Oracle International's CDAFA claim, the following terms
16 have the following meanings:

17 1. "Access" means to gain entry to, instruct,
18 or communicate with the logical, arithmetical, or memory
19 function resources of a computer, computer system, or
20 computer network.

21 2. "Computer program or software" means a set
22 of instructions or statements, and related data, that when
23 executed in actual or modified form, cause a computer,
24 computer system, or computer network to perform specified
25 functions.

1 3. "Computer network" means any system that
2 provides communications between one or more computer
3 systems and input/output devices.

4 4. "Computer services" includes, but is not
5 limited to, computer time, data processing, or storage
6 functions, or other uses of a computer, computer system, or
7 computer network.

8 5. "Data" means a representation of
9 information, knowledge, facts, concepts, computer software,
10 computer programs or instructions. Data may be in any
11 form, in storage media, or as stored in the memory of the
12 computer or in transit or presented on a display device.

13 6. "Supporting documentation" includes but is
14 not limited to all information in any form pertaining to
15 the design, construction, classification, implementation,
16 use, or modification of a computer, computer system,
17 computer network, computer program, or computer software,
18 which information is not generally available to the public
19 and is necessary for the operation of a computer, computer
20 system, computer network, computer program, or computer
21 software.

22 Instruction Number 47.

23 First, Oracle America and Oracle International
24 contend that Rimini Street and Seth Ravin violated the
25 CDAFA, section 502(c)(2). To prevail under this provision,

1 Oracle America and Oracle International must prove each of
2 the following by a preponderance of the evidence:

3 1. A defendant knowingly accessed and without
4 permission took or made use of any data, computer, computer
5 system, or computer network, or took any supporting
6 documentation; and

7 2. Thereby caused Oracle America and/or Oracle
8 International to suffer damage or loss.

9 If you find that Rimini Street and/or Seth Ravin
10 believed it had authorization to access Oracle America's
11 and/or Oracle International's computer, and did not exceed
12 that authorized access, then you must find that Rimini
13 Street and/or Seth Ravin did not violate the California
14 Computer Data Access and Fraud Act.

15 Instruction 48.

16 Second, Oracle America and Oracle International
17 contend that Rimini Street and Seth Ravin violated the
18 CDAFA, section 502(c)(3). To prevail under this provision,
19 Oracle America and Oracle International must prove each of
20 the following by a preponderance of the evidence:

21 1. A defendant knowingly accessed and without
22 permission used or caused to be used computer services; and

23 2. Thereby caused Oracle America and/or Oracle
24 International to suffer damage or loss.

25 If you find that Rimini Street and/or Seth Ravin

1 believed it had authorization to access Oracle America's
2 and/or Oracle International's computer, and did not exceed
3 that authorized access, then you must find that Rimini
4 Street and/or Seth Ravin did not violate the California
5 Computer Data Access and Fraud Act.

6 Instruction 49.

7 In addition to contending that Seth Ravin
8 personally violated the CDAFA, Oracle America and Oracle
9 International also contend that Seth Ravin assisted or
10 aided and abetted Rimini Street or its employees in
11 violating the CDAFA. If you have not found that Seth Ravin
12 personally committed one of the CDAFA violations above,
13 then you must consider whether Seth Ravin is responsible
14 for CDAFA violations committed by Rimini Street or its
15 employees.

16 To prevail on this theory Oracle America and
17 Oracle International must prove each of the following by a
18 preponderance of the evidence:

19 1. Seth Ravin knowingly and without permission
20 provided or assisted in providing another person a means of
21 accessing a computer, computer system, or computer network
22 in violating the CDAFA;

23 2. Seth Ravin's conduct was of substantial
24 assistance in the other person's CDAFA violation:

25 3. Seth Ravin knew the person intended conduct

1 that would violate the CDAFA; and

2 4. Seth Ravin's assistance was a substantial
3 factor in causing harm to Oracle America and/or Oracle
4 International.

5 If you find that Rimini Street and/or Seth Ravin
6 believed it had authorization to access Oracle America's or
7 Oracle International's computer, and did not exceed that
8 authorized access, then you must find that Rimini Street
9 and/or Seth Ravin did not violate the California Computer
10 Data Access and Fraud Act.

11 If you find that Seth Ravin assisted or aided
12 and abetted another person's CDAFA violation, you should
13 find for Oracle America and Oracle International
14 Corporation and against Seth Ravin on the CDAFA claim.

15 Instruction Number 50.

16 If you find that a defendant violated the CDAFA,
17 you may award damages to Oracle America and/or Oracle
18 International. These damages shall include amounts
19 sufficient to compensate Oracle America and/or Oracle
20 International for the harm it suffered as a result of any
21 violations, including any expenditure reasonably and
22 necessarily incurred to verify that their computers,
23 computer systems, computer networks, and/or data was or was
24 not altered, damaged, or deleted by the access.

25 In addition, if you find by clear and convincing

1 evidence that a defendant willfully violated the CDAFA with
2 oppression, fraud, or malice, you may additionally award
3 punitive damages for that defendant as set forth in the
4 instructions on punitive damages I will give you later.

5 You should determine actual damages separately
6 for each defendant, if any, that you find liable for
7 violating the CDAFA.

8 Instruction Number 51. In addition to its other
9 claims, Oracle America and Oracle International contend
10 that Rimini Street and Seth Ravin violated two provisions
11 of the Nevada computer crimes law ("NCCL"), under Nevada
12 Revised Statute section 205.4765. I will now instruct you
13 on the law regarding the applicable provisions of the NCCL
14 and the damages you may award if you find a violation of
15 the NCCL. If you find that a defendant violated at least
16 one of the NCCL's provisions that follow, you should find
17 for Oracle America and/or Oracle International and against
18 that defendant on the NCCL claim.

19 Instruction Number 52.

20 For purposes of accessing Oracle America and
21 Oracle International's claims, the following terms have the
22 following meanings:

23 1. "Access" means to intercept, instruct,
24 communicate with, store data in, retrieve from or otherwise
25 make use of any resources of a computer, network or data.

1 2. "Data" means a representation in any form of
2 information, knowledge, facts, concepts or instructions
3 which is being prepared or has been formally prepared and
4 is intended to be processed, is being processed or has been
5 processed in a system or network.

6 3. "Network" means a set of related, remotely
7 connected devices and facilities, including more than one
8 system, with the capability to transmit data among any of
9 the devices and facilities. The term includes, without
10 limitation, a local, regional or global computer network.

11 4. "Program" means an ordered set of data
12 representing coded instructions or statements which can be
13 executed by a computer and cause the computer to perform
14 one or more tasks.

15 5. "Response costs" means any reasonable costs
16 caused by an NCCL violation, including any reasonable cost
17 to:

18 1. Investigate the facts surrounding the
19 violation;

20 2. Ascertain or calculate any past or future
21 loss, injury or other damage;

22 3. Remedy, mitigate or prevent any past or
23 future loss, injury or other damage; or

24 4. Test, examine, restore, or verify the
25 integrity of or the normal operation or use of any Internet

1 network, electronic mail address, computer system, network,
2 component, device, equipment, data, information, image,
3 program, signal, or sound.

4 6. "System" means a set of related equipment,
5 whether or not connected, which is used with or for a
6 computer.

7 Instruction Number 53.

8 Oracle America and Oracle International contend
9 that Rimini Street and Seth Ravin violated the NCCL section
10 1. To prevail under this provision, Oracle America and
11 Oracle International must prove each of the following by a
12 preponderance of the evidence:

13 1. A defendant modified, damaged, disclosed,
14 used, transferred, concealed, retained possession of,
15 obtained or attempted to obtain access to, permitted access
16 to or caused to be accessed, or entered any of the
17 following: Data, a program or any supporting documents
18 which exist inside or outside a computer, system or
19 network;

20 2. The defendant did so knowingly, willfully,
21 and without authorization; and

22 3. Oracle America and Oracle International was
23 the victim of the defendants' conduct.

24 If you find that Rimini Street and/or Seth Ravin
25 believed it had authorization to access Oracle America

1 and/or Oracle International's computer, and did not exceed
2 that authorized access, then you must find that Rimini
3 Street and/or Seth Ravin did not violate the Nevada
4 Computer Crimes Law.

5 Instruction Number 54.

6 Oracle America and Oracle International contend
7 that Rimini Street and Seth Ravin violated the NCCL,
8 section 3. To prevail under this provision, Oracle America
9 and Oracle International must prove each of the following
10 by a preponderance of the evidence:

11 1. A defendant damaged, altered, transferred,
12 disclosed, concealed, used, retained possession of, or
13 obtained or attempted to obtain access to, permitted access
14 to or caused to be accessed any of the following: A
15 computer, system or network;

16 2. The defendant did so knowingly, willfully,
17 and without authorization; and

18 3. Oracle America and Oracle International was
19 the victim of the defendant's conduct.

20 If you find that Rimini Street and/or Seth Ravin
21 believed it had authorization to access Oracle America
22 and/or Oracle International's computer, and did not exceed
23 that authorized access, then you must find that Rimini
24 Street and/or Seth Ravin did not violate the Nevada
25 Computer Crimes Law.

1 We're getting closer, ladies and gentlemen.

2 Instruction 55.

3 If you find that a defendant violated any of the
4 above NCCL provisions, you may award compensatory damages
5 to Oracle America and or Oracle International. These
6 damages may compensate Oracle America and/or Oracle
7 International for any response costs, loss, or injury that
8 Oracle America and/or Oracle International suffered as a
9 result of the violation.

10 In addition, if you find by clear and convincing
11 evidence that a defendant willfully violated the NCCL with
12 oppression, fraud, or malice, you may additionally award
13 punitive damages against that defendant as set forth in the
14 instructions on punitive damages I will give you later.

15 You should determine damages separately for each
16 defendant, if any, that you find liable for violating the
17 NCCL.

18 Instruction Number 56.

19 If you find that Oracle America and/or Oracle
20 International is entitled to compensatory damages for
21 actual harm or loss on any of the following claims, then
22 you may, but are not required to, award punitive damages to
23 Oracle America and/or Oracle International:

24 1. California Computer Data Access and Fraud
25 Act (CDAFA);

1 2. The Nevada Computer Crime Law (NCCL); or

2 3. Intentional interference with prospective
3 economic advantage.

4 You may not award punitive damages with respect
5 to any other claim by any of the plaintiffs. Punitive
6 damages are not available for copyright infringement.

7 If you find that Oracle America and/or Oracle
8 International is entitled to compensatory damages for
9 actual harm or loss caused under one or more of those
10 claims, then you may consider whether you should award
11 punitive damages against that defendant. The question
12 whether to award punitive damages against a particular
13 defendant must be considered separately with respect to
14 each defendant.

15 You may award punitive damages against a
16 defendant only if Oracle America and/or Oracle
17 International Corporation proves by clear and convincing
18 evidence that the wrongful conduct upon which you base your
19 finding of liability for compensatory damages was engaged
20 in with fraud, oppression or malice on the part of that
21 defendant. You cannot punish the defendant for conduct
22 that is lawful, or which did not cause actual harm or loss
23 to Oracle. For the purposes of your consideration of
24 punitive damages only:

25 "Fraud" means an intentional misrepresentation,

1 deception or concealment of a material fact known to a
2 defendant with the intent to deprive Oracle America and/or
3 Oracle International of rights or property or to otherwise
4 injure Oracle America and/or Oracle International.

5 "Oppression" means despicable conduct that
6 subjects Oracle America and/or Oracle International to
7 cruel and unjust hardship with a conscious disregard of the
8 rights of Oracle America and/or Oracle International.

9 "Malice" means conduct which is intended to
10 injure Oracle America and/or Oracle International or
11 despicable conduct which is engaged in with a conscious
12 disregard of the rights or safety of Oracle America and/or
13 Oracle International.

14 "Despicable conduct" means conduct that is so
15 vile, base or contemptible that it would be looked down
16 upon and despised by ordinary, decent people.

17 "Conscious discard" means knowledge of the
18 probable harmful consequences of a wrongful act and a
19 willful and deliberate failure to avoid those consequences.

20 The purposes of punitive damages are to punish a
21 wrongdoer that acts with fraud, oppression and/or malice in
22 harming a plaintiff and deter similar conduct in the
23 future, not to make the plaintiff whole for its injuries.
24 Consequently, a plaintiff is never entitled to punitive
25 damages as a matter of right and whether to award punitive

1 damages against a defendant is entirely within your
2 discretion.

3 You are only asked to decide whether punitive
4 damages would be proper and justified in this case. You
5 are not asked at this time to determine an amount of
6 punitive damages. If you decide that punitive damages
7 should be awarded against a defendant, a limited hearing
8 will follow the return of your verdict in which the parties
9 may present relevant evidence bearing upon the amount of
10 punitive damages. The prospect of taking additional jury
11 time for a limited punitive damage hearing should have no
12 bearing whatsoever upon your decision concerning whether
13 punitive damages are proper and justified in this case.

14 Instruction Number 57.

15 Because Rimini Street is a corporation, Oracle
16 America and/or Oracle International must prove at least one
17 of the following by clear and convincing evidence in order
18 for punitive damages to be available:

19 1. That the malice, oppression, or fraud was
20 conduct of one or more officers, directors, or managing
21 agents of Rimini Street who acted on behalf of Rimini
22 Street;

23 2. That the conduct constituting, malice
24 oppression, or defraud was authorized by one or more
25 officers, directors, or managing agents of Rimini Street;

1 3. That one or more officers, directors, or
2 managing agents of Rimini Street knew of the conduct
3 constituting malice, oppression, or fraud and adopted or
4 approved that conduct after it occurred.

5 And employee is a "managing agent" if he or she
6 exercises substantial independent authority and judgment in
7 his or her corporate decision-making such that his or her
8 decisions ultimately determine corporate policy.

9 Instruction Number 58.

10 Even if you find that punitive damages might be
11 available, if you decided that Rimini Street and/or Seth
12 Ravin acted based on an objectively reasonable belief that
13 Rimini Street's and/or Seth Ravin's conduct was not
14 unlawful, such as at its interpretation of what the
15 licenses allowed throughout the period from 2006 through
16 2011, then you must not award any punitive damages.

17 Instruction Number 59. Return of verdict.

18 A verdict form has been prepared for you. After
19 you have reached unanimous agreement on a verdict, your
20 presiding juror will fill in the form that has been given
21 to you, sign and date it, and advise the Court that you are
22 ready to return to the courtroom.

23 Instruction Number 60.

24 Oracle America and Oracle International seek an
25 award of damages under multiple claims or legal theories.

1 After each claim or legal theory on your verdict
2 form, there is a space for the amount of damages, if any,
3 that you intend to award Oracle America and/or Oracle
4 International under that claim or legal theory. The amount
5 you enter into these spaces should include all the damages
6 that you conclude Oracle America and/or Oracle
7 International may recover on that claim or legal theory,
8 regardless whether the same damages are duplicated under
9 another claim or legal theory.

10 However, Oracle America and Oracle International
11 can only recover once for each harm or item of damage.
12 Therefore, at the end of the form there are spaces for the
13 "total nonduplicative damages" against each defendant.

14 You are instructed to write the total amount of
15 damages you intend to award to Oracle America and/or Oracle
16 International for all the harm caused by all the violations
17 for you which found that defendant liable without counting
18 damages for the same harm twice as to that defendant. When
19 determining this total amount you must exclude the amount
20 you found as statutory damages under the Copyright Act.

21 For example, if you find for Oracle America
22 and/or Oracle International on more than one claim, and
23 conclude that Oracle America and/or Oracle International
24 suffered the same harm and is entitled to the same damages
25 on more than one claim, only include those damages once in

1 the "total nonduplicative damages." Likewise, if you
2 conclude that Oracle America and/or Oracle International
3 suffered different and distinct harm on different claims
4 resulting in different damages on those claims, you should
5 add the different damages figures resulting from those
6 claims together for the "total nonduplicative damages"
7 number.

8 Instruction Number 61.

9 If it becomes necessary during your
10 deliberations to communicate with me, you may send a note
11 through the marshal, signed by your presiding juror or by
12 one or more members of the jury. No member of the jury
13 should ever attempt to communicate with me, except by a
14 signed writing. I will communicate with any member of the
15 jury on anything concerning the case only in writing or
16 here in open court. If you send out a question, I will
17 consult with the parties before answering it, which will
18 likely take some time. You may continue your deliberations
19 while waiting for the answer to any question. Remember
20 that you are not to tell anyone, including me, how the jury
21 stands, numerically or otherwise, until after you have
22 reached a unanimous verdict or have been discharged. Do
23 not disclose any vote count in any note to the Court.

24 Ladies and gentlemen, Instruction Number 62, I'm
25 happy to say, is the last instruction.

1 When you retire, you should elect one member of
2 the jury as your foreperson. That person will preside over
3 the deliberations and speak for you here in court.

4 You will then discuss the case with your fellow
5 jurors to reach agreement if you can do so. Your verdict
6 must be unanimous.

7 Each of you must decide the case for yourself,
8 but you should do so only after you have considered all the
9 evidence, discussed it fully with the other jurors, and
10 listened to the views of your fellow jurors.

11 Do not be afraid to change your opinion if the
12 discussion persuades you that you should. But do not come
13 to a decision simply because other jurors think it is
14 right.

15 It is important that you attempt to reach a
16 unanimous verdict but, of course, only if each of you can
17 do so after having made your own conscientious decision.
18 Do not change an honest belief about the weight and effect
19 of the evidence simply to reach a verdict.

20 Your verdict must be based solely on the
21 evidence and on the law as I have given it to you in these
22 instructions. However, nothing that I have said or done is
23 intended to suggest what your verdict should be - that is
24 entirely for you to decide.

25 The arguments and statements of the attorneys

1 are not evidence. If you remember the facts differently
2 from the way the attorneys have stated them, you should
3 base your decision on what you remember.

4 After you have reached unanimous agreement on a
5 verdict, your foreperson will complete the verdict form
6 that has been given to you, sign and date it and advise the
7 marshal outside your door that you are ready to return to
8 the courtroom.

9 Given in open court this 6th day of October,
10 2015, signed Larry R. Hicks, United States District Judge.

11 Ladies and gentlemen, as I mentioned, you will
12 have copies of all of those instructions for each one of
13 you in the jury room.

14 We will now proceed with the opening closing
15 statement of Plaintiff Oracle, and that will be followed by
16 a closing statement of Defendants Rimini. And Oracle will
17 then have an opportunity to present a rebuttal argument to
18 the arguments of Defendants Rimini and Ravin.

19 MR. ISAACSON: Your Honor, can we request five
20 minutes before we do that?

21 THE COURT: Absolutely.

22 This is going to take some time, ladies and
23 gentlemen, so obviously this is an appropriate time for a
24 recess. Relax, take a good break, and we'll reconvene and
25 proceed with the closing statements of counsel.

1 And the admonition still continues. So you're
2 not to discuss the case yet, you're not to allow yourself
3 to be exposed to anyone who is discussing it, and keep an
4 open mind until you've heard all these arguments and looked
5 at the instructions yourself.

6 You may go ahead and step down. Thank you.

7 COURTROOM ADMINISTRATOR: Please rise.

8 (Recess from 10:43 a.m. until 11:02 a.m.)

9 (Outside the presence of the jury.)

10 COURTROOM ADMINISTRATOR: Please rise.

11 THE COURT: All right. The record will show
12 we're in open court. The jury is not present. And I'm
13 advised counsel were concerned about another prospective
14 demonstrative.

15 MR. ISAACSON: Well, it's not so much the
16 demonstrative, Your Honor, but this pertains to question 6C
17 on the verdict form.

18 THE COURT: Okay.

19 MR. ISAACSON: We're not asking you to change
20 the verdict form.

21 THE COURT: Go ahead, please.

22 MR. ISAACSON: And when we get to my part of the
23 argument, I intend to be going through the verdict form and
24 indicating how plaintiffs think the jury should fill out
25 the verdict form.

1 6C is fair market value license.

2 THE COURT: Yes.

3 MR. ISAACSON: All right. And with respect to
4 that, Elizabeth Dean testified that if she were to employ
5 that method, the value of -- or what Mr. Hampton has called
6 the value of use method, that it would be the costs of the
7 entire business and you would add in more costs, and it
8 would be higher than her damages figure.

9 And so we would intend to fill in there higher
10 than Elizabeth Dean's copyright damages figure, and
11 defendants have objected to that.

12 MR. STRAND: Your Honor, Ms. Dean volunteered
13 that in cross-examination, and since it was
14 cross-examination, knowing the way cross-examinations of
15 experts go, it was not objected to.

16 However, it was in direct contradiction of
17 Oracle's express statement in pleadings before this Court
18 that they were withdrawing a fair market value of use
19 theory in this case.

20 So what they are now trying to do at -- later
21 than the eleventh hour, at about 4:00 this morning I saw
22 it, a copy of this new fair market value of use theory,
23 never before enunciated by Ms. Dean, expressly withdrawn by
24 Oracle in pleadings before this Court, and now in a slide
25 before the jury in closing argument, with absolutely

1 nothing to support it, they want to inject it into this
2 case.

3 It's totally inappropriate, it's uncalled for,
4 and it should be excluded. If they want to argue fair
5 market value of use, they can look at Mr. Hampton's number
6 and they can argue about that. But I don't think this is
7 appropriate. It's just not in the case.

8 MR. ISAACSON: Counsel's incorrect on a couple
9 of points. One is this was redirect of Ms. Dean, and it
10 was a question for which there was no objection. It was
11 following up on his cross-examination. It was a question
12 in redirect.

13 Secondly, this is not the -- we withdrew the
14 hypothetical license opinion.

15 What's happened at this trial is there's
16 something been called value of use which has been
17 incorporated into this fair market value license. Ms. Dean
18 was asked on redirect what her opinion would be about that,
19 and she said her number would be higher.

20 Our position is, and let me be clear about this,
21 that this fair market value license position from
22 Mr. Hampton or Ms. Dean is legally deficient. We don't
23 think this amount of money could be awarded to either party
24 or that this should be part of the case.

25 But since it is part of the case, she -- what

1 Ms. Dean says in reply to a value of use theory can be
2 filled in there.

3 MR. STRAND: Your Honor, she said it would be
4 higher than the value of use theory that Mr. Hampton opined
5 to on redirect, apparently.

6 She is now opining to \$112 million as higher
7 than Mr. Hampton's number. Higher than Mr. Hampton's
8 number is \$1 more, not \$103 million more with absolute
9 blindside for us this morning.

10 We never heard this number, never heard this
11 number before this morning.

12 If you want, Your Honor -- I don't have a copy
13 of it, but I could hand up the computer with a picture of
14 it. It's a brand-new theory inflated by a factor of more
15 than 10.

16 MR. ISAACSON: She said not higher than
17 Mr. Hampton's number, higher than her estimate of copyright
18 damages, and that's the 112.1.

19 THE COURT: All right.

20 COURTROOM ADMINISTRATOR: It's on the screen,
21 Your Honor. They put it on the screen.

22 MR. ISAACSON: The 112.1 number is her estimate
23 of copyright damages based on lost profits. And when she
24 testified the number would be higher, she didn't say higher
25 than Hampton's number, she said higher than her lost

1 profits number.

2 MR. STRAND: They're attempting to ascribe a
3 degree of precision here, Your Honor, that simply does not
4 exist in the record. She said higher than.

5 They can say higher than the number that she has
6 already stated for lost profits. Of course, there are no
7 lost profits in this case by our view, so \$1 there would
8 also be higher than. This is simply --

9 THE COURT: I understand the argument.

10 MR. STRAND: Okay. Thank you.

11 THE COURT: Where I am on it is -- it's clear
12 that there was testimony, and there's also -- it's also
13 clear that there's a dispute whether it's properly in this
14 trial.

15 But I have Rule 50 motions pending. I
16 anticipate I'll be receiving perhaps more, and all of those
17 are under submission.

18 I will allow this issue to go to the jury. I
19 will allow counsel to argue reasonable argument based on
20 testimony actually presented.

21 I am of the view that if there's evidence in the
22 record to support it and the evidence was presented to the
23 jury, counsel should be able to do it.

24 I appreciate defendants' argument, Mr. Strand,
25 but I -- I'd rather address this after I've had a careful

1 opportunity to review the history, review the specific
2 testimony, and determine whether it's an issue in this
3 case.

4 MR. STRAND: Thank you very much, Your Honor.

5 Just fair warning to plaintiffs that if they
6 bring this up, we will view it as a waiver of any Rule 50
7 argument regarding value of use. You may not, they will
8 not, but we will.

9 THE COURT: All right.

10 MR. ISAACSON: I will state as I just said on
11 the record, that whether money for value of use is awarded
12 to us or not awarded to us, we view it as a legally
13 deficient claim, and we are putting this -- the number in
14 just to protect our position.

15 MR. STRAND: And if they argue to the jury --

16 THE COURT: Okay. The parties' positions are
17 preserved.

18 I wasn't sure that I made it clear as -- with
19 regard to the exhibits that were admitted on redacted form.

20 Dionna, did you get the numbers of those
21 exhibits?

22 COURTROOM ADMINISTRATOR: The ones that are
23 still pending?

24 THE COURT: Yes.

25 COURTROOM ADMINISTRATOR: Yes.

1 THE COURT: Do you have them as admitted in
2 redacted form?

3 COURTROOM ADMINISTRATOR: Not yet because I
4 haven't received them.

5 THE COURT: All right. Well, when you do
6 receive them, I'll review them. But for the benefit of the
7 record they are deemed to be admitted.

8 I'm also not sure that I said on the record, any
9 motions that are pending, with the exception of the Rule 50
10 motions that have been filed by both sides, and motions for
11 judgment based upon evidence, are taken into submission by
12 the Court.

13 All other pending motions that have not yet been
14 resolved by the Court, to the extent there are any, are
15 denied without prejudice.

16 Let's bring the jury in, please.

17 COURTROOM ADMINISTRATOR: Yes, Your Honor.

18 (Jurors enter courtroom at 11:10 a.m.)

19 THE COURT: All right. Have a seat, please.

20 The record will show we are reconvened in open
21 court. The jury is all present, and counsel and parties
22 are present.

23 It is now the time for the closing statement to
24 be made on behalf of Plaintiffs Oracle.

25 So, Ms. Dunn, you're welcome to go forward.

1 MS. DUNN: Thank you, Your Honor.

2 And I just want to make sure that Matt is set up
3 to do the slides.

4 COURTROOM ADMINISTRATOR: Yes.

5 MS. DUNN: Good morning, ladies and gentlemen.

6 I thank you in advance for your time today and
7 also for your time every day that you have put in here.

8 Early in this case Seth Ravin, the defendant,
9 said it's like the sausage factory, if they want the
10 sausage, we don't necessarily talk about the factory.

11 This trial is the first time that anyone has
12 learned how the factory worked, how Rimini Street and Seth
13 Ravin actually operated, how they made thousands and
14 thousands of copies of Oracle software on their systems,
15 how they kept it on their own computer systems in violation
16 of Oracle's licenses, how they shared it among customers in
17 violation of Oracle's licenses, and how they used their
18 rampant and deliberate infringement to build a business
19 based on lies and deceit from the very beginning.

20 Ladies and gentlemen, they never wanted to talk
21 to you or anyone else about how this factory works and now
22 you know why.

23 So taking you back to opening, Bill told you
24 that we would prove copying, interference with customer
25 relationships, lies and concealment. Over our past three

1 weeks together, we have proved all of that and more.

2 So Judge Hicks has already told you that this is
3 not a criminal case. So the burden of proof is not beyond
4 a reasonable doubt, it's preponderance of the evidence.
5 And that means that you weigh the two sides, what's more
6 likely than not.

7 And now that all the evidence is in, there can
8 be no question, Oracle has proved its case.

9 You've learned a lot about Seth Ravin, the
10 defendant. You learned that he's CEO and founder of Rimini
11 Street and was president of a company called TomorrowNow.

12 He's Rimini's largest shareholder. He controls
13 policy and operations. He makes decisions about how much
14 customers are going to pay. He personally solicits
15 references. And he drafts those frequently asked questions
16 and controls standard messages to customers.

17 You also learned a lot about how Rimini Street
18 and Mr. Ravin operated. And you learned that they lie
19 until they get caught.

20 You witnessed this firsthand, ladies and
21 gentlemen. Time after time in this courtroom Seth Ravin
22 and Rimini Street have refused to tell the truth until
23 their back was up against the wall, and you saw with your
24 own eyes when confronted with documents, e-mails, and other
25 evidence, those walls came tumbling down. And we'll talk a

1 little bit about that today.

2 First, though, I want to address something that
3 Rimini's counsel started out talking about in the beginning
4 of this case. He started out talking about customer
5 choice. Customers have the right to choose. Well, we
6 agree with that.

7 Safra Catz, Oracle's CEO, is here with us today.
8 And I asked Ms. Catz when she testified, I asked her what's
9 Oracle's philosophy when it comes to competition, and she
10 cited one of the all-time great movies, "Bring It On." She
11 said, "Competition raises everyone's game, it keeps you
12 sharp."

13 So then I asked her, "Okay, well, what's the
14 difference between your competitors, like Microsoft and
15 IBM, and Rimini Street?"

16 And she said, "Well, those are honest
17 competitors. They play by the rules."

18 She also told you why we're all here today. She
19 told you that without copyright laws and without courts and
20 juries to enforce those laws, a lot of the technology that
21 we rely upon every day and take for granted just wouldn't
22 exist.

23 Tech companies couldn't innovate, they couldn't
24 help other companies do what they do, save lives, route
25 phone calls, fly planes, order things on the Internet,

1 basically anything else that businesses, hospitals,
2 schools, and governments do.

3 So let's talk about our claims in this case --
4 well, let's talk first about what this case is actually
5 about.

6 So you know that Rimini Street does not play by
7 the rules, and at this point you know that they break the
8 law.

9 So this case is now about three things. First,
10 what did Rimini Street and Seth Ravin do? What did Rimini
11 Street and Seth Ravin know? And how much should Rimini
12 Street and Seth Ravin pay?

13 So I'll be talking to you about these first two
14 things, and then Bill will talk to you about the third
15 thing, which is damages, and he'll also walk you through
16 the verdict form.

17 So I'm only going to say one thing about
18 damages, ladies and gentlemen, and that's that the
19 defendants have in their mind a number that they would like
20 to pay. And at this point, after all their lies and
21 misdirections, the one thing you can be sure about that
22 number is that it's not true.

23 All right. So let's talk first about our
24 copyright claim.

25 All right. So the Court has already decided

1 several issues that you all don't need to decide. The
2 Court has decided that Rimini Street has infringed Oracle's
3 copyrights with regard to PeopleSoft software and Oracle
4 Database. You will be responsible for deciding
5 infringement with regard to PeopleSoft documentation,
6 Siebel, and JD Edwards.

7 So it's a copyright case. And our first
8 witness, Dr. Davis, a professor from MIT, testified to you
9 that he counted up the copies, and he found that those
10 copies, if you laid them all out, would stretch from here
11 in Las Vegas to Rimini Street's headquarters in California.

12 No one disputes that. Even Seth Ravin said
13 Dr. Davis's numbers look accurate to him.

14 So, Dr. Davis also told you a little bit about
15 how Rimini Street's operation worked from a technical
16 perspective, and he told you that their operation was
17 filled with Oracle's copyright software.

18 So to be totally clear, ladies and gentlemen,
19 looking at this chart, not a single thing goes to a
20 customer from Rimini Street that does not start with
21 Oracle's copyright code. It's all in there, everywhere.

22 So let's get this issue of documentation,
23 PeopleSoft documentation, out of the way.

24 The Court has instructed you that if you find
25 the copies of PeopleSoft documentation were at Rimini

1 Street's facilities, or used for purposes other than solely
2 for the customer's internal use, then that's copyright
3 infringement.

4 And all you need to know to find on this issue
5 is that Dr. Davis told you that on Rimini Street's system
6 at its facilities were almost 600,000 copies of
7 documentation and that that included PeopleSoft
8 documentation.

9 So that's the finding on PeopleSoft
10 documentation; not much more to do there.

11 All right. For JD Edwards and Siebel, I'd like
12 to show you the actual jury instructions that the Court
13 just read.

14 Now, you're going to need to decide whether
15 Siebel and JD Edwards' copyrights were infringed. And,
16 actually, first let's go up to the three elements.

17 So, there are three elements of copyright
18 infringement:

19 One, Oracle owns or is the exclusive licensee of
20 a valid copyright in an original work;

21 Second, Rimini Street copied original elements
22 from, created derivative works from, or distributed the
23 original work;

24 And, three, Rimini did not have permission to do
25 that.

1 So if you go farther down, you'll find out the
2 first element and the second element have already been
3 satisfied, so that's also not what you're talking about.

4 And the judge has told you it's up to you to
5 determine whether Defendant Rimini Street has an express
6 license to copy these copyrighted works of JD Edwards and
7 Siebel software applications, related documentation. And
8 we already did PeopleSoft documentation.

9 So that's your responsibility.

10 Let's go to the next page.

11 The Court helps you out with your
12 responsibility, ladies and gentlemen. All those
13 instructions you were just read, those are designed to help
14 you out.

15 So if you look to the last paragraph under
16 copyright infringement, the Court tells you that it has
17 previously interpreted the relevant licenses as a matter of
18 law. And what that means is that the Court interprets the
19 licenses, and the Court tells you what that interpretation
20 is.

21 So if anyone else is trying to tell you what
22 those licenses mean today who is not the Court, that's not
23 appropriate. The Court is the one that tells us what the
24 licenses mean. And, in this case, the Court has done some
25 work already.

1 So a third party, like Rimini Street, can only
2 copy software and documentation for JD Edwards to the
3 extent necessary for the customer's archival needs and to
4 support the customer's use.

5 And the Court tells you exactly what an archival
6 copy is. It's an unmodified copy of the original software
7 application and documentation for use in the event that the
8 production copy, the copy that's being used by the client,
9 by the customer, in the event that that's corrupted or
10 lost.

11 So all we're talking about here, we're talking
12 about archive copies, is something unchanged, untouched,
13 you put on a shelf in case there's a disaster, in case
14 something is lost or corrupted.

15 Let's go to Siebel; next page.

16 So Siebel is basically the same thing. A third
17 party can make copies -- it's the page after, page 29.

18 So a Siebel customer can make copies on -- or a
19 third party can make copies of Siebel software on their own
20 systems solely for the customer's archive or emergency
21 backup purposes or disaster recovery and related testing.

22 Again, here, this is the same things, ladies and
23 gentlemen. An archival copy is unmodified, and it's the
24 thing that you use -- you put away -- if the copy that
25 you're using for some reason is corrupted or lost.

1 Let's go to the next slide.

2 So you already know, and Bill showed you this
3 slide in opening, it's the two rules about what Oracle's
4 license agreements prohibit.

5 One is they prohibit Rimini local environments.
6 Those are environments on Rimini's systems. Because the
7 software is supposed to be at the customer's facility.

8 Second, they prohibit what we've talked about
9 now for several weeks, cross-use. And that means you can
10 only use Oracle's software for that customer. If you're
11 using it to service other customers, that's cross-use, and
12 it's not permitted.

13 So what this all boils down to, ladies and
14 gentlemen, the Siebel license and the JD Edwards license,
15 what this boils down to as the -- is that the only thing
16 that would allow Rimini to have JD Edwards and Siebel
17 software on its systems would be if they used them as an
18 emergency backup or archive, the thing that you store away
19 offsite or on a shelf, and that you only use if it's
20 lost -- or if the one you work on is lost or corrupted.

21 We never heard any witness testify about this.
22 There is no evidence in this case to support that defense,
23 and I'll talk to you more about that in a little bit.

24 But first we should talk about what Rimini
25 Street did do, and we should talk about how that evidence

1 violated those rules.

2 So in the -- as you know already, in the spring
3 of 2006, when Rimini Street was just beginning, they began
4 building a software library.

5 And so this is one of the wall of lies that came
6 tumbling down actually even before this trial exists --
7 even before this trial began.

8 So Rimini Street in 2010, and then again in
9 2011, told the Court and told Oracle a library never
10 existed at Rimini Street.

11 Well, Rimini lied about this. As you now know
12 and the Court now knows, this was false. The library did
13 exist.

14 And Dr. Davis explained to you what this library
15 was. He said it's a digital library, and that's where
16 information from DVDs and websites was copied onto Rimini's
17 systems for use internally at Rimini Street.

18 We learned that the library was not for specific
19 customers. And Dr. Davis told you that, but you also saw
20 deposition testimony from George Lester, a Rimini Street
21 employee who said that.

22 We learned that the Rimini library was critical
23 to build those local environments that Rimini Street was
24 using to service its customers.

25 And we also learned how the library came to be,

1 how it was stocked with all that Oracle copyrighted
2 software.

3 Ladies and gentlemen, this is Plaintiffs'
4 Exhibit 1, and when you go back to the jury room, this is
5 one that you might want to look at.

6 So Oracle launched a website called eDelivery.
7 And eDelivery, as you'll remember, was a big discovery for
8 the folks at Rimini Street.

9 Oracle put software up there so that people with
10 licenses, either a regular license or a trial license,
11 could download that software, and when Rimini discovered
12 this, their response was "Help yourself to the buffet."
13 That's what they thought they could do. And that's what
14 they did do, they helped themselves to the buffet.

15 Seth Ravin saw the opportunity. He said at the
16 time, "I don't think we could ask for a better scenario for
17 enabling us to grow our customer base."

18 He knew that this was good for business.

19 Let's go to the next slide.

20 So even Rimini Street's lawyer said to
21 Mr. Ravin, "You have to admit this looks pretty bad."

22 But Seth Ravin, when he testified, did not admit
23 that this looks pretty bad. Instead, he said, you know, "I
24 was just wondering, does that mean everyone can help
25 themselves to it?"

1 He said this on the same day -- and if you look
2 over to the left of the screen, he said this even though
3 the same day he learned about the website, even though --
4 when he learned about -- when his people were saying "help
5 yourself to the buffet," he learned that there was a
6 license agreement, ladies and gentlemen. Seth Ravin knew
7 that there was a license agreement that his staff person
8 here is saying, "which I haven't reviewed."

9 And he took that stand and he told you under
10 oath, these many years later, that at the time he was
11 wondering whether this was all out there just so anyone
12 could take it. He knew that was not true.

13 So I asked Ms. Catz the same question as
14 Rimini's lawyer asked. I asked her, "Doesn't this look
15 pretty bad?" And she said, "Yes, it looks terrible."

16 And she explained that "This is like when you
17 walk into a department store, like Kohl's or JC Penney, or
18 you go to the grocery store, and everything's just out
19 there. That doesn't mean you can just take it. Everybody
20 knows that." And that's true, everybody does know that.

21 All right. Let's go to the next slide.

22 So also in 2006 Rimini was doing major downloads
23 from Oracle's website called Customer Connection. And this
24 is the kind of thing that you don't say if you're innocent,
25 if you're not doing anything wrong.

1 Dennis Chiu says in this instant message --
2 they're trying to get IDs so they can get into the website,
3 and they've asked some people.

4 And he says, "They would rather give me their
5 firstborn than the ID. But Raj's connections from outside
6 of PeopleSoft seem to have less issue with things like
7 that."

8 So they're trying to find ways to get these IDs,
9 not the usual way that you would get them, by getting a
10 license, and the goal is, as you can see down there, to
11 have a complete library of content available from Customer
12 Connection.

13 So if the first lie was that there wasn't a
14 library at all, the second lie is, well, it really wasn't
15 called a library. And let's look at Mr. Ravin's testimony
16 about that.

17 So, Bill asked him about the library. And first
18 he says, "No, not the type of library you're talking
19 about."

20 Then he says, "No, not in the way that you're
21 talking about it."

22 And then he says, "Well, okay, it was referred
23 to as a software library."

24 And then he says, "Well, it's just complicated."

25 It's not that complicated, ladies and gentlemen.

1 Library means library. It was a library. But, once again,
2 Mr. Ravin will only admit the truth when directly
3 confronted.

4 The next thing, the next lie in this library
5 chain is about installation media. So while Mr. Ravin
6 really didn't want to call it a library, I think you'll all
7 recall he really did want to call it installation media.

8 But this didn't work out either because
9 eDelivery did not actually contain any installation media.
10 And you've heard that both from Oracle's technical expert
11 and from Ed Screven, who's the chief corporate architect at
12 Oracle. And they both told you that the media is the disk,
13 and the stuff on the disk is installation software.

14 And so once you make the copy on the computer
15 and you install it, it's not installation media.

16 But even under Mr. Ravin's definition, the
17 library included far more than installation media. It
18 included patches, updates, fixes, and documents.

19 The same thing happened with the claim that the
20 library only contained PeopleSoft software. And we saw
21 document after document that made very clear that the
22 library contained all applications: JD Edwards, Siebel,
23 Oracle Database, and PeopleSoft software. And Dr. Davis
24 told you that too.

25 All right. Well, the last but maybe the best

1 library lie is "we gave you a snapshot."

2 So the Court has instructed you, ladies and
3 gentlemen, that Rimini Street breached its duty to preserve
4 evidence in this litigation when it deleted certain
5 material in the software library in January of 2010.

6 The Court also told you that you may infer that
7 the deleted material included evidence favorable to Oracle
8 and not to Rimini.

9 So obviously deleting evidence, just like the
10 buffet, you have to admit this looks pretty bad.

11 So how are they going to deal with this? Well,
12 they say, "We gave you a snapshot of exactly what was
13 deleted."

14 Well, so on the left you can see their snapshot,
15 and on the right you see a list of files, and that's from
16 2007, three years before their snapshot, with maintenance
17 packs that Krista Williams testified were in the library.

18 They were deleted. They were not in the
19 snapshot that Rimini claims shows exactly what was in
20 there.

21 Kind of makes you wonder what else might have
22 been in there, doesn't it? Well, we don't know. Because
23 the truth is that Rimini Street cannot possibly have told
24 us what was deleted because they didn't keep records about
25 what was checked in and out of the library.

1 Randy Davis said -- Dr. Davis says "There's no
2 indication that there was a way of keeping track"; and Seth
3 Ravin says, "Well, I think we had some records, but I'm
4 sure it was -- I'm not sure it was all complete."

5 Ladies and gentlemen, no audits, no records, no
6 logs, nothing electronic, nothing, just a fake snapshot and
7 a library deleted right before this case was brought.

8 All right. So we also learned that around the
9 same time Rimini was amassing Oracle's copyrighted software
10 in their library, they also were trying to figure out how
11 to launch their Siebel business. And as early as December
12 of 2005, Rimini was told it needed a Siebel license to get
13 software.

14 This person, Victor Shu is writing to Dennis
15 Chiu, a VP of support at Rimini Street, and he says, "I
16 would think you'd have taken out a contract with Siebel by
17 now. I don't think you can continue operation without a
18 contract."

19 Just a few months later Rimini Street solved its
20 problem. It paid Seth Ravin's childhood friend, Bill
21 Leake, to become a customer so they could get an ID for the
22 Siebel support website.

23 You remember Bill Leake. He's the one that
24 right now works at Rimini Street. Seth Ravin said he
25 couldn't remember whether he had paid Leake a million

1 dollars to become that first customer.

2 But, in any event, we did see internal e-mails
3 where Rimini Street is saying they're not a real customer.
4 And that's true, they weren't. But they did allow Rimini
5 Street to get the Siebel extracts for many customers.

6 Christian Hicks, one of our experts, counted 18
7 customers that they were able to get because of the ID that
8 they got from their fake customer, Bill Leake.

9 All right. So remember back there was a time we
10 didn't know what environments are? Now we know.

11 So software in the library was used to create
12 local environments. And this is undisputed, ladies and
13 gentlemen. 478 environments were copied by Rimini onto its
14 systems; 10 for JD Edwards, 381 for PeopleSoft, 87 for
15 Siebel, and then overlapping that number, 216 Oracle
16 Database local copies.

17 You know by now that those environments contain
18 exact copies of hundreds or thousands of Oracle's
19 copyrighted files. That's also undisputed.

20 But Rimini Street did also lie to us about
21 whether there were general environments, those general
22 development environments that allowed Rimini Street to work
23 in them and use the work that they did in those general
24 environments from multiple customers.

25 Brian Slepko, vice-president of global

1 operations, said in his deposition, when he was asked
2 whether "All the development is done for a particular
3 customer in that customer's environment using the
4 customer's files?"

5 He said "Yes."

6 "And then that work is repeated for each
7 customer for whom that work is applicable?"

8 "Yes."

9 All right. Well, ladies and gentlemen, that's
10 obviously not true. We saw plenty of documents in this
11 case, and this is just one of them, which showed that
12 Rimini Street had development environments and needed
13 general development environments, because to do this
14 customer by customer would have cost them too much money
15 and they wouldn't have been able to grow their business.

16 All right. In fact, finally, when confronted
17 with these documents, Seth Ravin admitted that they did
18 have general testing and development environments at
19 Rimini. They even had codes for them. This d-e-v, you
20 know now, means development environment.

21 So, ladies and gentlemen, the other thing I want
22 to say is that throughout trial Rimini counsel asked Oracle
23 witnesses, "Well, don't you let customers have testing
24 environments?"

25 Don't be fooled by this, ladies and gentlemen.

1 You have seen the rules. Things can be done on the
2 customer's site that cannot be done on Rimini's site.

3 Remember, that's the first rule. If something
4 is happening at the customer's facility, it is different
5 than if it's happening on Rimini's facility, which is
6 copyright infringement.

7 So let's talk briefly then about cross-use,
8 which is the violation of the second rule.

9 We also were told there was no cross-use. But
10 there were so many examples, ladies and gentlemen, of the
11 cross-use we saw in this case. The library, the misuse of
12 customer's IDs, downloading PeopleSoft before they had a
13 single PeopleSoft customer, troubleshooting in another
14 customer's environment, cloning, developing fixes and
15 updates.

16 In each of these circumstances Customer A's
17 software is being used to serve Customer B, and sometimes
18 Customer C, D, E, and F. That's all cross-use.

19 Randy Davis told you there were 149 Rimini
20 customers who received cross-use fixes and updates.

21 And he also told you that there were 104
22 customer environments that were cloned.

23 Look at this next slide, ladies and gentlemen.
24 This is really remarkable.

25 So, in 2010, Seth Ravin, the defendant, was

1 asked,

2 "Has it ever occurred that one customer's
3 software environment has been used to develop a fix or an
4 update that was ultimately delivered to a different
5 customer?

6 "No."

7 Even at this trial,

8 "So at Rimini Street you were using environments
9 of Client A to create fixes that you then distributed to
10 Clients B and C; correct?

11 "No."

12 Finally, the next day,

13 "What about this. Taking an update that you
14 created, your engineers created, and then using that update
15 for other clients with the same version of contract or
16 license, do you deny that you have done that?

17 "No. We reused it all the time."

18 Finally, Seth Ravin's back is up against the
19 wall, he has no choice, and he finally admits that, yes,
20 there's been cross-use at Rimini Street.

21 So Rimini Street did all of this. They violated
22 both rules, they kept thousands upon thousands of copies on
23 their own systems, and they used these copies to grow their
24 business and share software from customer to customer.

25 So as we talked already, there is only one

1 possible defense, and that is whether the environments are
2 used as archives or backups when something is lost or
3 corrupted.

4 So we have seen no evidence of that in this
5 case, ladies and gentlemen. Instead, the evidence we've
6 seen has been overwhelming that these copies were used for
7 purposes of working with the environments or for
8 troubleshooting problems. And let's look at some of the
9 evidence we've seen.

10 So Randy Davis told what you a backup copy is,
11 and he told you that it's something that doesn't get
12 changed because you might need it in an emergency.

13 Seth Ravin, he says his people used all that
14 software, including Siebel and JD Edwards, in connection
15 with work for customers.

16 Next slide.

17 He says that the backups are shipped to an
18 offsite storage, but that the functioning local
19 environments on the system are separate from those backup
20 tapes. Those are on the servers and at the data center at
21 Rimini Street, and those are the environments being used at
22 Rimini Street to support their customers.

23 Seth Ravin's own testimony gives up the
24 defendants' last possible defense.

25 Dennis Chiu said the same thing, Siebel

1 environments are used for troubleshooting.

2 And even if this was the only piece of evidence
3 in the entire case, you would know, ladies and gentlemen,
4 they have no license defense for Siebel and JD Edwards.
5 And anyone who tells you anything different, they're just
6 playing word games with you.

7 Same things with JD Edwards. They were used for
8 diagnostics and support.

9 And we saw documents that made clear how JD
10 Edwards software was used, how these environments would be
11 used, for support, for support, for support.

12 All right. So Bill also told you in opening
13 about a third rule that Oracle had, which was part of its
14 terms of use, and that's no automated downloading. So in
15 addition to violating Oracle's licenses, Rimini also
16 violated its terms of use.

17 Early on in 2007, in response to TomorrowNow,
18 Oracle changed its terms of use. And you'll see the
19 language right there on the screen.

20 It says,

21 "You may not use any software routines commonly
22 known as robots, spiders, scrapers, or any other automated
23 means, to access Customer Connection or any other Oracle
24 accounts, systems, or networks."

25 So this is actually from a Rimini Street e-mail

1 because in May of 2007, Seth Ravin and Rimini Street
2 learned that Oracle had changed its terms of use.

3 On June 20th, Seth Ravin learned from his staff
4 that the manual process wouldn't work. It would be
5 impossible to do that. It would take several months to
6 accomplish the same result manually. In other words, they
7 needed automated downloads no matter what those terms of
8 use said.

9 And the next day Seth Ravin himself directed
10 that Rimini would continue massive unauthorized
11 downloading. He said himself, "I made that decision."

12 And they didn't just download a little bit,
13 ladies and gentlemen, they downloaded a lot, more than
14 twice the Library of Congress. That's what Christian Hicks
15 told you.

16 David Renshaw, the senior database
17 administrator, said that he had never seen anything like
18 this before, over a million entries where usually in a day
19 that are 20 or 30.

20 And you learned that Rimini's crawl on the
21 website caused deadlocks and slowed the system down. This
22 is a chart that shows that.

23 Now, Rimini Street had an expert look at this
24 too. But he specifically excluded the times when Rimini
25 was running its crawl; not all the times, he excluded some

1 of them.

2 But think about this. He did a slowdown
3 analysis that excluded the times when Rimini slowed the
4 system down. That makes no sense.

5 After this happened in November of 2008, there
6 were internal e-mails at Rimini. "They're on to us for
7 massive downloading." Even the customer tells them this is
8 illegal.

9 So they do change their ways for January of 2009
10 and download a little differently. This was the e-mail
11 where you saw the e-mail address JR Corpuz at Rimini Street
12 over and over and over again, because this was the number
13 of times that Rimini Street is trying to download from the
14 Oracle system, a single user at Rimini Street responsible
15 for all the deadlocks.

16 And everyone agrees, ladies and gentlemen,
17 Oracle's server was down for four and a half hours. Even
18 Rimini Street's expert agrees with that. He just doesn't
19 think that that impaired the system.

20 Well, now, this is something we did
21 underestimate in opening. So remember that Bill showed you
22 the stop watch in opening, and it went for 20 seconds and
23 he stopped talking, and that seemed like a really long
24 time? Well, four and a half hours is a really long time.

25 Do you remember that day when Scott Hampton, the

1 Rimini damages expert, was on the stand? He spent four and
2 a half hours refusing to answer questions. And remember
3 how long that felt?

4 Well, now, you can imagine if you're trying to
5 run a power grid or a hospital or a phone company. Four
6 and a half hours can be very devastating. It could be
7 disabling. And that's what Rimini Street did.

8 All right. So now I'm going to talk about lies
9 and interference, which we also said we would prove, and
10 this relates to our interference claim. Bill will walk you
11 through the actual jury instructions.

12 But the judge has already told you two things.
13 You'll need to find that Rimini Street intended to disrupt
14 Oracle's relationships with customers and that Rimini
15 Street made misrepresentations to customers.

16 So in April of 2006, Rimini Street was already
17 declaring to prospective investors that its goal was to
18 interfere with customer relationships.

19 Look at their investment proposal, ladies and
20 gentlemen. They say it in black and white. "Rimini Street
21 separates Oracle from its acquired licensees," those are
22 the customers, "denying Oracle recurring revenue."

23 They're even looking to capitalize on Oracle's
24 customer loss by targeting Oracle's competitors.

25 So remember when Rimini's lawyer told you none

1 of this was intentional, it wasn't aimed at hurting anyone?
2 Well, that is wrong, and that is not true, because it's
3 clearly here aimed at hurting Oracle and aimed at
4 separating Oracle from its customers.

5 I asked the company's CFO about this, and he had
6 to agree, this was the stated purpose from the beginning.

7 And Seth Ravin also agreed that they were
8 actually soliciting investors by saying that competitors of
9 Oracle would benefit when Rimini Street caused Oracle to
10 lose customers, which is what happened in this case.

11 That was their plan from the beginning.

12 So let's talk, ladies and gentlemen, about the
13 lies and misrepresentations to customers. This is what the
14 judge said would be talked about in the interference claim.

15 So Rimini communicated with its customers
16 through standard messaging. And you learned where those
17 messages came from.

18 So Kevin Maddock, the head of sales at Rimini
19 Street, came to testify to you, and he told you that those
20 FAQs came from marketing.

21 And then David Rowe, head of marketing, told you
22 that those messages came from Seth Ravin and the operating
23 committee.

24 So let's look at these messages that came from
25 Seth Ravin and the operating committee.

1 At this point we know that each one of them is
2 false.

3 "We never share fixes or deliverables between
4 clients."

5 "We only use your ID or password."

6 "Each client receives their own unique
7 deliverables."

8 "What we're going to deliver to you is going to
9 come from your own environment and not someone else's
10 environment."

11 We now know, ladies and gentlemen, you now know,
12 that all of these are false, and, by the way, so does Kevin
13 Maddock. He didn't know the truth.

14 Is there anyone in this courtroom who did not
15 feel bad for Kevin Maddock when he testified? He looked so
16 uncomfortable. Because no one ever told him that these
17 things that he had been telling the customers for years
18 were not true. He admitted that.

19 And a week later David Rowe testified, he took
20 the stand, and he told you the same thing.

21 Ladies and gentlemen, those messages originated
22 with the defendant, Seth Ravin. His own witnesses told you
23 so.

24 Marketing and sales. Those are the people that
25 talk to the customers, and those are the people who were

1 not allowed to know the truth at Rimini Street.

2 So they also had standard messaging and FAQs
3 about what they called their strict procedures to protect
4 intellectual property. And those procedures were supposed
5 to make them different from TomorrowNow.

6 Ladies and gentlemen, look at the slide. This
7 is the sum total of the strict procedures we saw in the
8 case. You saw nothing. We didn't see a single shred of
9 evidence, not a single written-down policy or procedure.

10 We did see, though, that Rimini lied to specific
11 customers. Abilene Independent School District. "We're
12 going to build a test an development environment just for
13 Abilene Independent School District."

14 And here you see Krista Williams saying, "We're
15 going to clone Abilene's environment."

16 CKE Restaurants. "We never share fixes or
17 deliverables between clients. Each client receives their
18 own unique deliverables created in their own environment
19 with their source code."

20 Dr. Davis told you that "CKE received updates
21 developed or tested in environments associated with other
22 customers."

23 City of Flint. "Test environment will be used
24 exclusively for the support of your PeopleSoft
25 application."

1 Then Doug Baron said, "Here's what I had to do
2 to clone the City of Flint."

3 Next, CMS, Correctional Medical Services. "We
4 create unique and independent environments for each client,
5 and we use their customer ID exclusively to support them."

6 Dr. Davis told you that that wasn't true also.

7 So even after this lawsuit was filed, ladies and
8 gentlemen, Kevin Maddock told you that they continued to
9 tell these customers the same standard messages, "We don't
10 share software between customers," "We don't use
11 development environments between customers," "we are not
12 violating Oracle's copyrights."

13 Not only that, the frequently asked questions
14 documents, the FAQs, became more frequent after this
15 lawsuit was filed, not less; more lies, not less, even
16 after this lawsuit was filed.

17 Rimini Street even had Brian Baggett come here
18 to testify without telling him the truth. You remember
19 Brian Baggett? He's the guy who used to work at Bausch &
20 Lomb but Rimini's website says he still does?

21 He told you directly if he had known that Rimini
22 Street was violating Oracle's copyrights on a massive
23 basis, he would have gotten rid of them; yet somehow he was
24 here testifying, even though this Court had already found
25 that Oracle's copyrights were violated by Rimini Street.

1 Nobody told him that, apparently, and he had no
2 idea of what's been going on at this trial. He didn't know
3 what you knew. He only knew what the Rimini guys told him.
4 And he said that they didn't say they actually did it.

5 So what we've learned is that lying is at the
6 center of everything that Rimini Street does.

7 In opening, I heard Rimini's lawyers say that
8 our case was built on half truths and diversions. Well,
9 that's true. Our case is built on Seth Ravin's half
10 truths, diversions, and sometimes out-and-out lies.

11 These folks have lied to the Court. They've
12 lied to Oracle. They've lied to their own customers.
13 They've lied to prospective customers. They lied to their
14 sales department and their marketing department. And,
15 ladies and gentlemen, as you know by now, they've lied to
16 you.

17 In fact, recently Seth Ravin made up a new lie
18 just for you.

19 Rimini's lawyer asked him how he could possibly
20 square that admission that they reused updates all the time
21 with what he had previously said.

22 And he said, "Well, that was just the base
23 software, that was vanilla code, not the individual,
24 customized components."

25 So let's focus on what they're saying here,

1 ladies and gentlemen, because I anticipate that this
2 brand-new lie is going to come up in closing.

3 For the first time ever, Seth Ravin is
4 contending that Rimini Street could legally use -- reuse
5 vanilla software but not customized software, and he's the
6 only Rimini employee ever to say that.

7 Well, this new lie will not work. The Court has
8 already told you that having copies of a customers software
9 on Rimini's server, vanilla or customized, is copyright
10 infringement.

11 Also, you have already seen that Rimini's system
12 is filled with Oracle's code. So for a customized
13 environment, all that means is that Rimini has changed
14 Oracle's code, not entirely, made some changes, and then
15 sent that to Rimini's own customers. And Jim Benge, VP of
16 PeopleSoft Development, acknowledged this.

17 Randy Davis explained to you that far from being
18 particularly legal, this is what's called making a
19 derivative work. And the judge used this term a few times.
20 You'll see it again in the jury instructions.

21 Doing this without a license, ladies and
22 gentlemen, without permission from the creator of the work,
23 in this case Oracle, is copyright infringement.

24 So what Seth Ravin is really telling you is,
25 like, if I took Harry Potter from J.K. Rowling, and I

1 didn't have her permission, and I changed all the
2 characters' names in the book and then sold my version of
3 Harry Potter, somehow that would be better, that would be
4 more legal, selling my altered version of Harry Potter than
5 selling her original version without her permission.

6 Ladies and gentlemen, that is ridiculous on its
7 face, and both would be copyright infringement.

8 All right. Well, you know -- you saw the
9 evidence, and you know that you can't believe this because
10 you saw no evidence that there's some distinction where
11 it's more legal to copy vanilla code than customized code
12 and reuse that.

13 And, actually, internal documents at Rimini
14 Street prove just the opposite. Again here their lies are
15 defeated by the actual evidence.

16 In this e-mail Dennis Chiu says to a customer,
17 "Rimini Street is precluded from using any updates,"
18 referring to vanilla updates.

19 He says that "While Oracle can employ the method
20 of creating a single vanilla update, Rimini Street is not
21 legally able to do that."

22 That is what Seth Ravin is telling you right now
23 is okay? And this is what they did. They did use those
24 environments, and it was not legal.

25 So, ladies and gentlemen, don't let Seth Ravin

1 and Rimini Street convince you of things that you know is
2 not true based on the evidence that you have seen with your
3 own eyes.

4 I expect that during counsel's closing, after I
5 sit down and Bill sit down, you are going to hear new
6 things you have never heard before, that there will be no
7 evidence for in this entire case. And when you hear these
8 things, you ask yourself, have I ever heard anything like
9 this before? Is there any evidence to back this up? Or
10 are they just trying to put another one over on me?

11 All right. So the last thing that I'll talk to
12 you about, ladies and gentlemen, is what Rimini and Seth
13 Ravin knew. And this has to do with willfulness and with
14 punitive damages.

15 So here's the instruction for willfulness. And
16 all that this means is that the defendant engaged in acts
17 that infringed the copyright and that they knew that those
18 acts engaged the copyright.

19 Punitive damages. The judge walked you through
20 this a little bit. And basically this means that the
21 defendant engaged with fraud, oppression, or malice.

22 Fraud includes intentional misrepresentation,
23 deception, or concealment of a material fact.

24 And also relevant to punitive damages is
25 something called conscious disregard. That means that

1 knowledge of -- if you have knowledge of a probable harmful
2 consequence of a wrongful act but you deliberately fail to
3 avoid the consequences.

4 So the questions are did they know; and was it
5 intentional?

6 Ladies and gentlemen, of course, they did, and,
7 of course, it was.

8 First of all, customers warned Rimini Street
9 that what they were doing was illegal. Here's a list of
10 customers saying that what Rimini would do would violate
11 Oracle's copyright agreements.

12 This one person says that this is pretty much
13 boilerplate verbiage in the Oracle contract.

14 So many customers told them that what they were
15 doing was illegal. So what did Seth Ravin say?

16 So he first said, "Well, I would interact with
17 those contracts pretty much every day."

18 But he also said, "Well, the customers signed
19 the contracts, and we didn't have access to that
20 information."

21 Then he said, "It was the customer's
22 responsibility to make sure their license wasn't violated.
23 It was the customer's liability.'

24 But then he also said, "We would influence the
25 customers. We would give them our opinion."

1 So based on Mr. Ravin's four separate answers to
2 essentially the same question, we can't really tell what
3 he's saying he knew. So let's look at the evidence.

4 David Rowe told you that the truth is Rimini
5 Street could get information about those contracts when it
6 wanted to because it signed nondisclosure agreements with
7 customers.

8 So Rimini Street's excuse, and I think you'll
9 see this in their closing too, that this information was
10 all confidential as to them, that is not true, because they
11 were able to get this confidential information.

12 And we saw that Seth Ravin did give legal
13 opinions to customers about the licenses. So you saw this
14 license a number of times. It's a PeopleSoft license.

15 And this is an e-mail that Seth Ravin drafted to
16 be sent to a customer. And he says, "It's our opinion,"
17 he's giving a legal opinion "that Rimini Street's services
18 do not violate the provisions of the license."

19 Mr. Ravin knew he was lying to customers about
20 what he was telling them. He told them that that provision
21 in the license agreement only applied to systems used in
22 production, not other environments.

23 But, ladies and gentlemen, you didn't see that
24 language in any license because there isn't any; not this
25 one, not any license.

1 One thing you did see, though, was this
2 provision, where PeopleSoft can give you a license to have
3 copies solely for licensee's internal data processing
4 operations located at the sites specified in the schedules.

5 And you might remember that Rimini's lawyer made
6 a big deal that the S at the end of sites makes it plural.
7 We do agree with that.

8 So if you look, ladies and gentlemen, in this
9 agreement the site specified down here is Brazoria County,
10 Texas.

11 So when Bill asked Seth Ravin about this, he
12 said, "It means Texas, and you thought it was okay to use
13 it in California?"

14 And he said, "Yes."

15 So in the Seth Ravin dictionary, library does
16 not mean library, customer software does not mean customer
17 software, and Texas does not mean Texas.

18 Seth Ravin's legal advice was wrong, and he knew
19 that. He knows that when he tells a customer that Texas
20 means California, that that's misleading people.

21 And defendants have tried to create a lot of
22 confusion about these licenses, but the Court has already
23 told you what this means. It means at the customer's
24 facilities and not at Rimini Street's facilities.

25 Rimini's counsel told you in opening being wrong

1 doesn't make you a liar. Well, being a liar, ladies and
2 gentlemen, makes you a liar.

3 And no matter what they say, they went ahead and
4 did this.

5 Brian Slepko admitted this in his deposition.
6 If a customer did not ask any questions, they just assumed,
7 they decided on their own this was legal. And if a
8 customer did ask a question, they assured them it was legal
9 and the customer relied on that.

10 So there's other evidence obviously they knew
11 what they were doing. Oracle puts copyright notices on
12 everything, on the websites, on the documents, on the
13 disks, even in the source code. The source code that's
14 being manipulated by the people at Rimini Street has the
15 copyright notice in it.

16 Ladies and gentlemen, this is -- this is sort of
17 my favorite. So there's a whole collection of documents in
18 this case where there are things you just don't say if
19 you're innocent, things you would never say if you weren't
20 doing anything wrong.

21 "They're onto us."

22 "Oracle's not checking this against the
23 licenses."

24 "I don't think this is licensed."

25 "You can download Oracle software but not to

1 make money and we're making a crap load of money from their
2 free stuff."

3 And Brian Slepko, "This is something keeping me
4 up at night. All it takes is one small misstep and they
5 would be all over us, and I can guarantee that they're
6 watching."

7 You don't say those kinds of things, ladies and
8 gentlemen, if you're not doing anything wrong.

9 And you certainly do not behave like this. This
10 is how they got their first customer.

11 This e-mail from Thomas Shay, who is very high
12 up in the company, includes Bill Leake. He says, "We're
13 going to say that LCGrowth is interested in getting a
14 license."

15 "I'll be on his tech staff, and you'll be the
16 one doing the implementation."

17 If you're not doing anything wrong, you don't
18 say "I'll pretend to do this and you pretend to do that."

19 Well, accidentally this e-mail got sent to
20 Oracle. That was not a good thing.

21 And Seth Raven said "I'm not happy because these
22 kind of errors are serious stuff."

23 Well, the next one is my personal favorite of
24 things you don't say if you're innocent.

25 "Sounds quite similar to the current processes,

1 and I'm unclear as to what differentiates this approach
2 from a more 'legal' approach. Seems like we're either
3 pregnant or we're not."

4 Well, I definitely agree with that.

5 And this person says, "flying lower under the
6 radar might be the better solution."

7 So the other thing we learned in this case is
8 that Seth Ravin was paying attention to his former company,
9 TomorrowNow. And this is the defense timeline. And they
10 made a very big point of telling you that Seth Ravin left
11 Rimini Street in March 2005, which they say is before
12 Oracle sued TomorrowNow.

13 Well, they have not shown you the whole story.
14 We added this line, the first red one, which shows when the
15 conduct at issue in the TomorrowNow lawsuit started, and
16 that is after Seth Ravin gets there and before he leaves.

17 The documents also show you that Seth Ravin was
18 paying attention to what was happening in his former
19 company. So we learned that in 2007, in July, right in the
20 middle of the time period at issue in this case, SAP, the
21 parent company of TomorrowNow, admitted wrongdoing and
22 demoted the CEO.

23 TomorrowNow discontinued local environments on
24 its systems. That's the same practice that Rimini Street
25 continued, knowing that TomorrowNow stopped it. Rimini

1 Street, Seth Ravin, chose to continue.

2 Not only did they choose to continue, in this
3 e-mail Seth Ravin is saying that the decision to
4 discontinue local environments is a ridiculous policy. And
5 he declared that they would be using their decision to host
6 local environments for their competitive advantage.

7 So did they know that they were doing this,
8 ladies and gentlemen? Was it intentional? Of course, it
9 was.

10 So Bill asked Seth Ravin, "You were never going
11 to move away from this business model, were you?"

12 And Mr. Ravin said, "Right, we did not change
13 our business model," after TomorrowNow.

14 They did, however, delete TomorrowNow from their
15 web bios and from the FAQs that they share with customers.

16 So did they know? Was it intentional?

17 Ladies and gentlemen, you have already heard
18 that Rimini Street hid the truth from the marketing and
19 sales department.

20 David Rowe and Kevin Maddock got up here and
21 they told you "We did not know that we were sharing
22 customer software," "We did not know we were reusing fixes
23 and updates among clients all the time," "We did not know
24 we were cloning environments," "We did not know about the
25 software library," "We did not know about the general

1 testing environments."

2 All things, ladies and gentlemen, that you now
3 know, and all things that the defendant, Seth Ravin, knew
4 at the time.

5 But when he was asked what he knew, Seth Ravin
6 said, again and again, "I was focused on building the
7 business."

8 There it is. He said three times right here.
9 "I was focused on building the business."

10 "The engineers did that."

11 "I was focused on building the business."

12 But he also told you that in the early days this
13 is a business that had two or three people running the
14 show. And given that he invented the business model, you
15 got to ask yourselves, ladies and gentlemen, how could he
16 not know?

17 And we've seen how, when Bill asked Mr. Ravin
18 questions on the stand, sometimes he just couldn't remember
19 the details.

20 But when his lawyer asked him questions, he
21 could remember all sorts of details, like about how deeply
22 he became a 24-hour customer and about what happened with
23 XO's automated downloading.

24 And we have seen by this point in this case a
25 mountain of evidence to demonstrate that Seth Ravin was

1 involved in all kinds of decisions in the details and what
2 customers were told.

3 All of this, ladies and gentlemen, makes -- make
4 no mistake, this all leads back to Seth Raven. He was
5 focused on building a business, a business that we now know
6 never would have existed if they weren't violating Oracle's
7 copyrights.

8 So, in opening, Rimini Street and Seth Ravin's
9 lawyer said to you, "We're here to be held accountable for
10 our actions."

11 Well, then, we're all here for the same purpose.
12 We're here to hold Rimini Street accountable for what they
13 did, what they knew, and the harm they caused.

14 Seth Ravin, the CEO of Rimini Street, told you
15 that the work he did was the customer's liability, the
16 customer's legal liability.

17 Safra Catz, the CEO of Oracle, told you what it
18 really means to be a CEO, what CEO accountability really
19 means.

20 She told you it means that you're responsible.
21 It doesn't mean that you point the finger at Oracle or you
22 point the finger at your own customers. You take
23 responsibility for what you have done, what you have
24 designed, what you have built, and what you have lied to
25 protect.

1 Ladies and gentlemen, we are so grateful for the
2 time that you have put into this case.

3 We have all worked very hard, but your job is
4 the most important job of all.

5 Hold Rimini Street and Seth Ravin accountable
6 for what they've done. Don't let them get away with
7 breaking the law and lying to you. That's what the law
8 requires.

9 Thank you.

10 THE COURT: Mr. Isaacson, I'm going to interrupt
11 for a moment. I have to correct a couple of mistakes that
12 I spotted on the instructions so that they can be run off
13 for the jurors, and we'll just take a break, no more than
14 five to ten minutes.

15 And, ladies and gentlemen, you still can't
16 discuss the case, but take advantage of the break. We'll
17 be back within five to ten minutes, and this will not be
18 charged on anyone's time.

19 Thank you.

20 COURTROOM ADMINISTRATOR: Please rise.

21 (Recess from 12:10 p.m. until 12:19 p.m.)

22 (Jurors enter courtroom at 12:19 p.m.)

23 THE COURT: Have a seat, please.

24 The record will show we're reconvened after the
25 short break. The jury is present. Counsel and parties are

1 present.

2 And, Mr. Isaacson, I see you're about to address
3 plaintiffs' damages.

4 MR. ISAACSON: Thank you, Your Honor. And good
5 afternoon.

6 Karen talked to you about what Rimini did and
7 what they knew. I'm also going to talk to you about what
8 they should pay. But I'll point out to you that so much of
9 Rimini's case, so much of Rimini's defense, is avoiding
10 those first two questions, which are involved with what
11 they should pay.

12 That started from the beginning of Rimini's
13 case. Rimini brought to you Ms. Blackmarr, a really nice
14 person working home alone in Florida, who knew nothing
15 about this case, who knew nothing about the copying, the
16 lies, the library, the environments. She knew she liked
17 talking to customers.

18 Rimini is not confronting what's happening here.
19 We've had to force them to tell the truth about what's
20 happening here every step of the way.

21 The verdict form which I'm going to walk through
22 with you is about what happened here. It is about
23 copyright violations, it is about massive unauthorized
24 copyright violations, it is about lies and deception, and
25 it is about taking Oracle customers. It's not about these

1 other things.

2 Can we show -- this was a slide that Rimini
3 showed you in opening. This is what they said the case was
4 about, three essential truths.

5 Customers have the right to choose Rimini. That
6 was one of the first things they've told you and they've
7 repeated throughout. And that never had anything to do
8 with illegality. It never denied illegality. And it's not
9 true.

10 No one has the right to choose an illegal
11 business. Dishonest businesses hurt honest businesses.
12 They stop honest businesses from growing and creating jobs.
13 They hurt choices that we have.

14 The real question is those last two questions
15 which are about what should Rimini and Mr. Ravin pay.

16 Karen took down the walls of lies that we've
17 been taking down throughout this trial. The last walls are
18 coming down on damages.

19 They want you to make an award of 9.3 to
20 \$14 million. That's the last wall.

21 It's riddled with lies. It begins with a story
22 told by Seth Ravin and ends with an expert who makes up a
23 damage theory and assumes so many things. That's the last
24 wall that comes down.

25 Rimini's case has been about avoiding what's

1 happening here. Rimini -- if you go to the next slide.

2 The judge has instructed you here on what
3 matters, I know that took a while, but you're going to see
4 it in the verdict form. And what matters is the real
5 truth: copyright, lies, harms to computers, what Karen was
6 talking about, the library, the environments, the
7 downloads, the cross-use, the lies.

8 The noise is the defense, which has nothing to
9 do with what's on the verdict form. You're not going to
10 see forced upgrades on the verdict form. You're not going
11 to see ISO standards or reuse or vanilla or quality
12 service. Those are all just excuses.

13 Oracle's witnesses talked about what is at issue
14 in this case, and it's an important principle to Oracle.
15 Oracle depends on innovation. Oracle depends on research.
16 It creates jobs that way. It grows and it makes other
17 businesses better.

18 That's why Oracle witnesses focused on
19 innovation, investment, the thousands of engineers who work
20 on what Oracle does, and then we focused on the copyright
21 violations and the lies that were attached to that.

22 The Rimini witnesses -- and you can compare the
23 Oracle witnesses to the Rimini witnesses. You've been able
24 to see everybody; some live, some on video.

25 They told -- the Rimini witnesses told you

1 different things at different times. Some outright lied to
2 your face, like Mr. Slepko, like Mr. Ravin. They told you
3 things that were outright lies.

4 Mr. Leake, you saw him on video.

5 You saw one of the highest executives in this
6 company on video at the beginning of the business,
7 Mr. Chiu, and you saw him incredibly try to avoid questions
8 when you saw all the documents his name was on that
9 indicated that he knew about the copying and the
10 infringement.

11 You saw people like Mr. Grigsby, who became the
12 head of the JDE unit after he took 40,000 documents with
13 him from JD Edwards, and they showed you how he took one of
14 those documents, took JD Edwards' name off of it and put
15 Rimini's name on it, and stamped it confidential.

16 You can compare the people you saw from Rimini,
17 the support people, to people like Buffy Ransom who told
18 you about how Oracle goes about providing quality support.

19 Rimini was wrong about so many things in this
20 case. Rimini was wrong when they talked about how support
21 is answering the phone and how quickly you answer the
22 phone. It's not how quickly you answer the phone, and,
23 boy, Oracle answers that phone quickly, Buffy Ransom told
24 you that, but it's what happens when the phone is picked
25 up.

1 And when it's picked up at Rimini, what do they
2 have? All that copied material, things they took from
3 websites, surrounded by the Oracle library to answer those
4 questions.

5 They were wrong about what was happening at
6 Rimini. Rimini was short staffed. We showed you those
7 documents.

8 We showed you how they talked about they would
9 tap dance with customers when they would ask about
10 staffing. We saw the instant message about we need to blow
11 the whistle around here because we can't keep this hidden
12 any longer.

13 They talked about customizations. There's
14 nothing about customizations in this verdict form. But
15 that was exaggerated. Because what we found out from their
16 own e-mails is they wrote internally that they lacked the
17 infrastructure in team capabilities to actually provide
18 those customizations to truly support our client's ongoing
19 customizations.

20 They couldn't do it, and so they wrote in
21 e-mails proudly, "Look how we steered the clients to
22 vanilla, not to customizations."

23 They were wrong about forced upgrades. They
24 said it's called a forced upgrade in opening statement, and
25 the Oracle witnesses said, no, there is -- are no forced

1 upgrades, there is lifetime support.

2 Buffy Ransom explained how customers value
3 upgrades, and she talked about how often major releases
4 happen, and how it's a rare customer that skips three major
5 releases. Why? Because then you're playing with the Atari
6 game system when all the modern game systems are out. You
7 don't do that. You're playing with 1996 software in your
8 business.

9 You have a business running on 15-year-old
10 software, all of which Rimini tells its customers is a good
11 thing to do as long as you're getting 50 percent off.

12 Slide 13.

13 They told Rimini -- Rimini told its customers
14 "you don't need security." Seth Ravin admitted it. David
15 Rowe, the head of marketing, said "You're telling them
16 there's no risk with no security upgrades."

17 They said, "It's not a problem. We have
18 holistic security."

19 And what does that mean? Once again, it's the
20 customer's problem. "You keep up your firewalls. We don't
21 have to have security in the software."

22 And they said, "Well, that's okay, we don't
23 remember any customer complaining about it."

24 Because customers don't complain about security
25 until it's too late. You don't complain about the security

1 in your computer until it's breached.

2 Target didn't complain about its computers
3 probably until thousands of credit card informations went
4 out to somebody.

5 This software is full of private information,
6 people's Social Security numbers and salaries, and they
7 told customers it's okay not to keep it secure.

8 Edward Screven, the head of corporate
9 architecture at Oracle, told you, "That ridiculous. You
10 cannot possibly be claiming to provide support when you're
11 doing that."

12 And Safra Catz, the CEO, sitting here -- the
13 executive vice-president of Oracle, Dorian Daley, has been
14 sitting here throughout the trial. We thank her for that.
15 We also thank Ms. Catz for being here because this is
16 important to Oracle. And she told you what's happening
17 here.

18 Okay. This isn't a discount. This is an
19 overcharge. They are roping customers in with things that
20 they should not be buying, and the only way they do it is
21 by copying Oracle software.

22 So I told you I would take you through the
23 verdict form. So I'm going to do that on the screen.

24 Page 1, Matt.

25 The first question you will be asked is about

1 PeopleSoft documentation, because the Court has already
2 found liability for PeopleSoft software.

3 As Ms. Dunn explained, it really is the same
4 issue with the documentation. We showed it was copied. On
5 page 2, we ask you to fill that in yes.

6 And at some point, if there's any note takers,
7 there's going to be some numbers. I'm going to ask you to
8 jot down some numbers.

9 Number 2 and number 3 are JD Edwards and Siebel
10 copyright violations, and we will ask you to answer those
11 questions yes.

12 Now, fourth, contributory infringement.

13 Now, this is where Mr. Ravin is individually
14 liable for the copyright infringement that has gone on
15 here.

16 So we look at page 33 of the instructions. Blow
17 that up, Matt.

18 "To prevail on contributory infringement against
19 Seth Ravin, each of the following elements must be proved
20 by a preponderance of the evidence:

21 "1. Seth Ravin knew or had reason to know of
22 Rimini Street's infringing activity."

23 Obviously he did. That's been clear.

24 "2. He intentionally induced or materially
25 contributed to the infringing activity."

1 He caused all of it. He gave the directions.

2 There is a similar instruction -- a similar
3 question for vicarious infringement, question 5. There.
4 We will ask you to answer all these questions yes.

5 And now let's look at page 34, the vicarious
6 instruction, infringement instruction. This is similar to
7 contributory infringement.

8 "To prevail on vicarious infringement against
9 Seth Ravin, each of the following elements must be proved
10 by a preponderance of the evidence:

11 "1. Seth Ravin profited directly from Rimini
12 Street's infringing activity."

13 He told you how he is the major shareholder of
14 Rimini Street.

15 "2. Seth Ravin had the right and ability to
16 supervise or control Rimini Street's infringing activity."

17 I'm not sure anybody else did, but he sure did.

18 "3. Seth Ravin failed to exercise that right
19 and ability."

20 We all know that.

21 These questions, as well as other questions
22 about Seth Ravin's individual liability, are about the
23 accountability that Karen was talking about.

24 In Mr. Ravin's -- if we can look at slide 2. In
25 Mr. Ravin's testimony, he tried to point blame at everybody

1 else because part of this trial is about him and his
2 individual liability.

3 He said it was customers who were responsible or
4 their legal departments. He blamed Oracle. He blamed
5 Dennis Chiu at the beginning of the company.

6 He talked about those Rimini engineers while he
7 was busy running the company. He is a CEO who wants no
8 accountability.

9 He thought it was fine for Bill Leake to say to
10 the press "I'm going to work with Rimini for five or ten
11 years" when they weren't -- he wasn't using the Siebel
12 software at all.

13 Seth Ravin said he was a visionary, and that
14 turned out to be false.

15 He said he cared about the customers at SAP.
16 That turned out to be false.

17 He said he wanted to work with Oracle, he
18 offered to work with Siebel and Oracle. And we learned
19 that when questions were asked of him, he refused to answer
20 those questions, and he agreed to accept a finding of
21 contempt of court rather than answer those questions.

22 All of these things have been not true and are
23 all about Mr. Ravin avoiding accountability.

24 The next slide, slide 3.

25 Mr. Ravin was caught lying so often in this

1 trial. His own counsel asked him a loaded question.

2 "Mr. Ravin, on the stand under oath, do you
3 recall any instances where you told something to a customer
4 that wasn't truthful in your opinion?

5 "ANSWER: No."

6 CEOs need to be accountable under the law. It's
7 not enough to say "I do not recall having an opinion that I
8 was lying." It's time to say "I was telling the truth."
9 And that's not what happened here.

10 If we don't hold CEOs responsible, we're not
11 going to be able to hold companies responsible. This case
12 is not just about Rimini.

13 All right. Let's go back to the verdict form.

14 Now, copyright infringement, actual damages,
15 question 6. You see I've written the name Dean, or my
16 colleagues have, and Hampton.

17 Elizabeth Dean did an estimate of lost profits.
18 And we are asking you to check lost profits.

19 They would like you to check fair market value
20 license because that's what the -- what Mr. Hampton was
21 talking about. And I'll go through that.

22 But you'll remember that was that theory that
23 Mr. Hampton has never talked about before in all of his
24 hundreds of cases, and it's another example of a made-up
25 fiction from Rimini Street.

1 Question 6A. This is lost profits.

2 Now, you will have to look at PTX 601 -- 6010.
3 That's Elizabeth Dean's summaries of the damages. And it's
4 back here, and I'll explain to you the total number is
5 \$16.2 million. Lower, and I'll get to that in a minute.

6 But the total number we're asking for is
7 229.7 million.

8 All right? 95.7 million, this would be the
9 answer to 6A, is due to copyright. 6A is copyright, lost
10 profits.

11 Question 6B -- oh, and let me just -- let's look
12 at the instruction on lost profits. No, 6B. Now we're on
13 defender's profits.

14 So the lost profits are from our lost customers.
15 For other customers we're allowed to have any profits
16 Rimini made. And Elizabeth Dean walked that through with
17 you. And she said here are the revenues that they made.
18 And she said it's about \$32 million.

19 And then what happens then -- and let's look at
20 page 40 of the instructions. This is infringer's profits.

21 "If you determine that lost profits are the best
22 measure of Oracle International's actual damages, then you
23 must also determine the amount of profits, if any, made by
24 Defendant Rimini Street that are directly attributable to
25 the infringement and were not taken into account in

1 computing lost profits."

2 This is what Elizabeth Dean calculated for you,
3 the additional amounts that were not taken into account.

4 And then she said here are the revenues that
5 weren't taken into account.

6 Now, Rimini Street, as you'll see down below,
7 bears the burden of proving its expenses by a preponderance
8 of the evidence.

9 So they came in and gave their expenses, all
10 right, and that was after Elizabeth Dean testified. So
11 there needs to be a deduction for those expenses.

12 And they talked about their profit margin on
13 these products being about 50 percent. So once you make
14 that deduction from Elizabeth Dean's numbers, based on the
15 evidence as submitted, it goes down 16.2. And the answer
16 to 6B becomes \$16.4 million. The answer to 6B is
17 \$16.4 million.

18 Now, question 6C is the Hampton question, fair
19 market value license. That's where they'll say, I guess,
20 it's 9.3 million or 14 million or something like that.

21 But what Elizabeth Dean testified to you is, if
22 you're going to use that measure, which you should not do,
23 that they were getting it wrong, and the actual damages
24 would be higher than the total copyright damages.

25 And so the answers to questions 6, 7, and 8, are

1 all going to be the same number, \$112.1 million. So I
2 would ask you to write down 6, 7, and 8, \$112.1 million
3 because that's the lost profits, the 95.7, plus the
4 infringer number put together, 16.4. Together that adds up
5 to 112.1.

6 And that's the contributory infringement and the
7 vicarious infringement for Mr. Ravin.

8 So next on the verdict form is statutory
9 damages. Statutory damages, the judge has told you, we
10 don't get on top of everything else.

11 Frankly, it's an amount of principle. If you
12 award us the money we asked for, we don't get this money.
13 But the statute says we're entitled to ask for it and for
14 you to declare that, yes, you were correct.

15 And so, as a matter of principle, we are asking
16 you to award statutory damages.

17 Question 9 is, was the infringement innocent.
18 Answer, no. This was not innocent infringement.

19 Question 10, on the next page, was the
20 infringement willful. Answer, yes, because it was knowing.
21 Karen showed you those instructions on that.

22 So question 11, statutory damages -- stop there.

23 The parties have agreed there's 93 copyrighted
24 works, and you are allowed, if you make a finding of
25 willfulness, to multiply 93 by 150,000, which would be page

1 7 of the instruction.

2 Move to page 7 -- next page, Matt. There.

3 That is -- 13.95 million is the answer to
4 question 13, and that's 93 times 150,000.

5 The answer to question 12 and 13 is the same
6 number, because that's where Mr. Ravin is contributory and
7 vicariously liable.

8 Which brings us to question 14, inducing breach
9 of contract. For that I need to look at the instruction on
10 inducing breach of contract. Inducing means causing that.
11 That they caused a breach of contract.

12 So let's look at that instruction, page 45 of
13 the instructions.

14 To prevail on this claim, there are seven
15 things.

16 One, a valid contract between Oracle America and
17 a customer.

18 The contract that we are referring to here is
19 found in PTX 19. It's the terms of use for the website.
20 And on page 1, section 1, of those terms of use, it says
21 you don't share your ID.

22 And who shared an ID? Bill Leake at the
23 beginning of this company, his Siebel ID, when he got paid
24 to do that.

25 So, second, Rimini Street or Seth Ravin knew the

1 contract existed.

2 Yes, we know they knew the terms of use existed.

3 Three, Rimini Street or Seth Ravin intended to
4 cause Oracle America's customers to breach its contract.

5 Yes, they paid Bill Leake to have him give the
6 Siebel ID to Rimini Street so they could start downloading
7 from Siebel SupportWeb.

8 Four, was that justifiable.

9 Of course, not. They're paying the man.
10 They're paying the man to hand over his ID, a fake
11 customer.

12 Five, they caused the breach of contract.

13 Yes, they caused the breach of the terms of use.

14 Six, Oracle America was directly harmed.

15 The whole Siebel business was built from the
16 beginning based on this. Eighteen customers got the
17 extracts.

18 Rimini -- finally, the conduct was a substantial
19 factor in causing Oracle America harm.

20 That's how the business started.

21 So we ask you to answer yes to the questions on
22 question 14 for breach -- for inducing breach of contract.

23 And for the amount of damages, which is question
24 14, the amount of damages we ask you to award,
25 \$21.1 million, which is Oracle America -- this is Oracle

1 America, and that's Oracle America's share of the Siebel
2 business about which Elizabeth Dean testified and again is
3 in PTX 6010.

4 Now, we come to question 15. Intentional
5 interference. Intentional interference is the lies, lying
6 to the customers to get the business, all those FAQs, all
7 those standard messages that Karen talked about.

8 Let's look at the instruction for that.

9 Intentional interference with prospective
10 economic advantage, page 47.

11 Prospective economic advantage, that means our
12 customers. And there's eight points here. And while
13 that's kind of intimidating -- those are long instructions.
14 Don't worry, juries reach verdicts even after long
15 instructions.

16 There's eight points here. Oracle America --
17 first -- and Oracle International had an expectancy in a
18 prospective contractual relationship with a customer.

19 They had contracts with customers. That part's
20 easy.

21 Second, Rimini Street and Seth Ravin knew about
22 those relationships.

23 Yes, they knew about our customers. They came
24 to take them.

25 Three, Rimini Street and Seth Ravin engaged in

1 unlawful or improper conduct.

2 They lied. That's as unlawful as you get.

3 Four, by engaging in this conduct, Rimini or
4 Seth Ravin intended to disrupt the relationship.

5 Yes, they were taking the customers through the
6 lies.

7 Five, the conduct was not privileged or
8 justified.

9 Lying is never privileged or justified.

10 Six, the relationship was disrupted as a result
11 of such conduct.

12 They took the customers.

13 Seven, Oracle was harmed, we lost customers.

14 Eight, and what they did was a substantial
15 factor in causing us harm.

16 Yes, they took a lot of customers through these
17 lies, and Elizabeth Dean measured that for you.

18 So the amount of damages here are divided
19 between -- 15 and 16 are the same question, one for Oracle
20 America and one for Oracle International. It's been
21 divided up.

22 So we ask you to answer yes for intentional
23 interference -- again, lying -- for 15 and 16.

24 Oracle America's share of that, of the total
25 number of intentional interference, is 117.6 million.

1 That's the answer to question 15, 117.6 million.

2 And the answer to question 16, which is Oracle
3 International's share, is 76.5 million.

4 Now there are the computer access claims.

5 All right. What's going on here? All of a
6 sudden there are pages and pages being read to you about
7 interference with computers and things on computers. And
8 you'll have those instructions.

9 That's the automated downloading going onto our
10 system without permission. That's what all that's about.

11 And, guess what, that's illegal under California
12 law and under Nevada law. So we've made claims for that.

13 So let's look at -- question 17 is the
14 California computer law. And that's -- when the judge was
15 reading those, like, I don't even know the acronyms myself,
16 CRRP or whatever, that's either the California law or the
17 Nevada law.

18 And the instruction, page 64 of the
19 instructions, is actually fairly simple when you boil it
20 down.

21 To prevail under this provision what Oracle must
22 prove is, one, a defendant knowingly accessed and without
23 permission took or made use of any data, computer, computer
24 systems or computer network or took any supporting
25 documentation.

1 We know Rimini went into our computers, our
2 servers, our websites, and took lots of data and supporting
3 documentation and other things, and they did it without
4 Oracle's permission. They might show you we had the
5 customer's permission. They need Oracle's permission.

6 Second, thereby causing us to suffer harm or
7 loss.

8 Christian Hicks testified about the customers
9 that were being served during that period, and you've seen
10 the evidence, how they built their Siebel business based on
11 this. We were harmed.

12 The -- so the damages -- so question 17 and 19
13 are going to be -- the answers are going to be the same.
14 These are Oracle America questions for the computers. 17
15 is under the California statute, 19's under the Nevada
16 statute, which is very similar.

17 And the numbers there are 8.8 if it's just
18 the -- million, if it's just the Christian Hicks'
19 customers; and it's 21.1 million if it's the entire Siebel
20 customers. That's for both Rimini Street and Seth Ravin
21 individually.

22 So the -- for Oracle International the answers
23 to questions 18 and 20 are the same, 5.6 million if you're
24 just dealing with the Christian Hicks' customers, and
25 13.8 million if you're talking about the whole Siebel

1 business.

2 Now, when we say on each of these counts these
3 numbers, that doesn't mean we get paid if these all add up.
4 Right? This is just what we're entitled to on that
5 individual claim.

6 We only get nonduplicative damages. And when
7 you award the same amount, which is what we're asking for,
8 for Rimini and Seth Ravin, that doesn't mean they pay
9 twice. That means together they have to pay, but they pay
10 that same amount of money.

11 So when we ask for \$229.7 million against the
12 company and Mr. Ravin, that doesn't mean the figure gets
13 doubled, that means they're both responsible for paying
14 that amount of money, that same amount of money, and that's
15 the most we would get paid.

16 All right. So now the nonduplicative damages
17 amount. That's question 21 and 22. This is again divided
18 between Oracle America and Oracle International.

19 Oracle America is question 21, that's
20 117.6 million; and question 22 is 112.1 million, again, all
21 drawing from PTX 610.

22 I appreciate your patience. It's a long verdict
23 form. I needed to do that so you would understand what
24 we're asking for.

25 Now let me tell you some more about why that's

1 the right thing to do.

2 What should be -- what should Rimini and Ravin
3 pay, that third question. Slide 18.

4 I showed you in opening statement, we showed it
5 to Mr. Ravin. He knew from the very beginning of this
6 business that he -- that quality service wasn't enough, it
7 wasn't enough to pick up the phone fast, he had to have the
8 rights to use the Oracle software, and without those rights
9 everything else was noise.

10 He wrote,

11 "It wouldn't matter if we had the best JDE
12 resources in the world if we don't resolve the foundation
13 issues. A client first and foremost must believe they have
14 the right to be with us and use their software, or the rest
15 is just noise."

16 Scott Hampton talked repeatedly about what Seth
17 Ravin says is noise. He says, no, it's quality service.
18 Seth Ravin knew differently.

19 Next slide.

20 From the very beginning, thanks to copyright
21 violations, they had a business.

22 He wrote to someone in March of 2006, Mr. Ravin
23 did, right when the business was starting. He said,

24 "This is the stretch where we go from a couple
25 referenceable clients to four, and then we have a business

1 core and we have a business."

2 Without copyright violations, there is no
3 business. This business was corrupt with copying from the
4 very beginning, and it began with lies with the very first
5 customer.

6 We showed that to you with a timeline, which is
7 the next slide, that -- how Rimini grew through
8 infringement and deception.

9 The timeline again shows what happens, a company
10 built on environments full of Oracle software in violation
11 of the copyright laws, and then the library, all going on
12 while the customer base grew.

13 We showed you slides like slide 21, the first
14 Siebel customers.

15 Dr. Davis explained to you that the message is
16 Rimini Street's early growth depended in very large measure
17 on local use of customer environments and cross-uses of
18 fixes.

19 I showed Mr. Ravin these slides, and he was
20 unable to deny any of this.

21 No expert witness came up to you and said, "this
22 is wrong, they got this wrong."

23 Everything Dr. Davis told you about the very
24 beginning of this company being built on copyright
25 infringement was uncontested.

1 If -- without copyright infringement, Rimini
2 Street would not have gotten off the ground, it would not
3 have grown, it would not have had references, it would have
4 ended, and it would have taken no Oracle customers.

5 Elizabeth Dean talked about that. Their whole
6 business model was prefaced on the alleged wrongdoing.
7 They couldn't offer a 50 percent vendor-level replacement
8 service if they hadn't done those things.

9 Rimini's pilot clients. We went to the early
10 documents and said "who are your most important clients,"
11 and they were all riddled with copyright infringement.

12 Their top references -- now, remember,
13 PeopleSoft, about which the Court has already found
14 liability for the software, is 75 percent of the damages
15 here.

16 You don't even have to decide that liability.
17 75 percent of the damages are about something the Court has
18 already found.

19 And we know that the references that they were
20 relying on were riddled with copyright infringement. And
21 Seth Ravin told you "without referrals we wouldn't have a
22 business."

23 This business doesn't exist without taking
24 copy -- Oracle's software. All the customers were based on
25 wrongdoing. Elizabeth Dean told you this.

1 "My opinion is that Rimini's entire business
2 model was based on the allegations of wrongdoing from the
3 very first instance."

4 They wanted to say which customers did you talk
5 to? So whether or not they had a direct communication with
6 one customer isn't relevant because the entire business is
7 operating in this fashion.

8 I think the entire business model being built on
9 these allegations of wrongdoing led to their success. All
10 the customers, every last one, was part of a business that
11 was full of corrupt copying.

12 If an illegal gang sells some Starbucks on the
13 side, you don't say, well, they're doing some good. You
14 don't say, let's say that gang has some value for whatever
15 the Starbucks that we're selling.

16 This was a corrupt business of copying and lies
17 from the beginning, and that was the business that was set
18 up.

19 They asked Elizabeth Dean about individual
20 customers, "What about Access Intelligence?" And she told
21 you Access Intelligence and everyone else were all based on
22 this business because it was a business of wrongdoing.

23 There was never any acknowledgement from Rimini
24 to any customer that they were acting improperly. There
25 was never a customer where they said "here's our business,

1 we are going to infringe Oracle's software copyrights. We
2 are going to violate the laws. Come work with us."

3 They listed the companies. These are the
4 companies that they were proud of, riddled with copyright
5 infringement.

6 And you'll remember -- I think IBM is somewhere
7 on here. Yes, over there to the left, how they weren't
8 really working with IBM, they're just working with little
9 parts of some of these major businesses.

10 Again, it shows the business was built on
11 copyright violations.

12 Let's go to slide 30.

13 They talked about taking a billion dollars in
14 Oracle customers. They thought they could take 5 to 10
15 percent of Oracle's customer base, and they talked about
16 bigger opportunities than \$1 billion.

17 "That might have happened," said Mr. Maddock.

18 Mr. Zorn said "I have heard that."

19 They had to have the Oracle software to have a
20 billion dollar business.

21 And Safra Catz, the CEO of Oracle, said "We've
22 lost hundreds of customers." And when you lose a
23 million-dollar customer for 10 years, that's \$10 million.

24 But it's not just the money. They broke the
25 relationship. All right?

1 They went to the customers and said "we can
2 provide you the same service," which wasn't true, "and we
3 can do it for 50 percent off."

4 And so, guess what, some customers said, "Gee,
5 we're not as fond of Oracle anymore," right? "We might
6 even be mad at Oracle. Someone's offering us a better
7 price." And, of course, that's happening because Rimini is
8 only doing that by taking Oracle software.

9 If one day you invented a great chocolate chip
10 cookie, and you started selling it on your block, and
11 everybody says "that's a great chocolate chip cookie," and
12 they just love you, and somebody copies your recipe and
13 sells the cookie for 50 percent off, the people on the
14 block are going to start thinking differently about you,
15 and that's what happened here.

16 Rimini was making lots of money. Karen already
17 showed you, they knew that what they were doing was not
18 licensed. They were making a crap load of money, they
19 said.

20 Next slide.

21 And they talked about their backlog. They told
22 their investors about the backlog of orders they were
23 building up, growing from 100 million to 750 million by
24 2013.

25 Mr. Ravin tried to say that amount doesn't mean

1 much -- doesn't mean much.

2 Mr. Zorn, the chief financial officer of the
3 company, said, "no, we tell that number to investors,
4 people we want to put money in our company."

5 Mr. Ravin would say whatever it took on the
6 stand to avoid what was going on here.

7 So we presented evidence of lost customers. It
8 began with Mr. Yourdon, Mr. Yourdon, who had 25 years of
9 industry experience with enterprise software, including
10 consulting with customers who are making enterprise
11 software decisions.

12 There was no other expert of comparable
13 experience talking about what Mr. Yourdon talked about.

14 He reviewed materials, not just for 17
15 customers, for 200 customers, and he reached the conclusion
16 that most of Rimini's customers would have stayed with
17 Oracle if Rimini hadn't come along, that about 95 percent
18 of them would have stayed there.

19 Now, they show you slides and pictures about the
20 5 percent and say those people are different.

21 And Mr. Yourdon said, "No, they're not." Okay?

22 Rimini came in and disrupted the relationship
23 with that 5 percent by promising 50 percent off and copying
24 the software. But, otherwise, those customers would be
25 just the same as everyone else, and you would expect most

1 of them to stay with Oracle.

2 And no expert responded to Mr. Yourdon. Nobody
3 from the industry came in here to tell you Mr. Yourdon was
4 wrong.

5 He also told you the customers would not leave
6 Oracle for illegal support which seems self-evident. But
7 it's that same proposition. If Rimini tells the truth,
8 they're not going to leave Oracle. And there was no
9 response.

10 So we presented to you Elizabeth Dean who has 25
11 years experience estimating damages. She's been in over a
12 hundred intellectual property cases and many copyright
13 cases.

14 She estimated total damages, once you make this
15 reduction that I've talked about, now we're going to put it
16 on the screen.

17 We've made the adjustment for the profits, the
18 additional profits. And I put in red -- we put a little
19 red box that when you look at PX 2010 you have to take
20 \$16.2 million off. And that's how you get 229.7.

21 So let's compare that number to what Rimini was
22 saying internally.

23 Rimini took over \$300 million in contracts from
24 Oracle. They wrote that. They wrote that in a document.
25 That's in 2009. That's not even counting 2010, 2011, 2012.

1 And Mr. Ravin admitted, that's right, they took
2 \$300 million in business.

3 But Elizabeth Dean did not count all that
4 \$300 million, and she showed you calculations.

5 I'm not going to go through the calculations.
6 But I want you to remember all those calculations she
7 showed you and ask you what did Mr. Hampton show you? He
8 didn't walk you through any numbers like Elizabeth Dean
9 walked you through.

10 She also showed you how she wasn't counting
11 things and how she was removing customers. She was
12 reducing the damages amount because she thought that was
13 the right thing to do, to take those things into account.

14 How she took the pieces of the pie out, how she
15 had a specific attrition rate that reduced the damage
16 amount by 25 percent. And then she applied, on top of
17 that, the general attrition rate at Oracle.

18 Slide 44.

19 So these are these infringer profits that I told
20 you about. So the 32.6 million is what Elizabeth Dean told
21 you about. And we've reduced that by 16.2 million to 16.4.

22 The reason we did that is because after
23 Elizabeth Dean testified, Mr. Zorn testified about profit
24 margins, 49 percent for PeopleSoft, 50 percent for JD
25 Edwards and 70 percent for Siebel.

1 And so we have reduced the amount of our claim
2 based on that testimony and based on the judge's
3 instruction; meaning that for PeopleSoft, where liability
4 has already been determined, the total copyright damages
5 are \$71.6 million.

6 The copyright damages, as we explained to you
7 before, go to Oracle International because 39 percent of
8 that money goes to Oracle International. And the Court has
9 instructed you that we're correct, that Oracle
10 International Corporation is the owner or exclusive
11 licensee of the copyrights at issue.

12 The damages for Siebel are 15.3 million, this is
13 copyright; and JD Edwards, 6 million. And Elizabeth
14 Edwards -- Elizabeth Dean also broke down the profits by
15 customer. This is PTX 5469. She did it customer by
16 customer for you.

17 So the next item of damages is Oracle Database.
18 This is another area where the Court has said that there
19 has been copyright infringement.

20 You're not deciding whether there's copyright
21 infringement of Oracle Database, the Court has already said
22 there is. You'll decide whether this amount should go into
23 the copyright damages. And we have included it in our
24 total copyright damages.

25 And the way this was done was \$19.2 million.

1 Elizabeth Dean explained this to you. This is either the
2 license value, if you pay for it, or the lost profits.

3 But she took the standard Oracle license fee,
4 she applied it to the number of actual environments used,
5 and applied that over time to get \$19.2 million.

6 Mr. Hilliard, a technical expert for the
7 defense, appeared to say, well, gee, they could have put
8 this all on two computers. That doesn't matter. That's
9 not how Oracle prices things, and the Court has already
10 found liability.

11 The Oracle Database damages are actually kind of
12 simple. Rimini agreed with me, Mr. Hampton agreed that
13 Rimini agrees that it would pay what Oracle actually
14 charges customers. You only have to look at what Oracle
15 actually charges customers.

16 And Mr. Allison testified about that and said
17 Ms. Dean has it right, she's calculating how we charge
18 customers.

19 And "Could Rimini have bought one license from
20 Oracle to allow it to use Oracle Database to support
21 multiple customers?"

22 "Absolutely not."

23 And he said "Dean applied Oracle's actual
24 pricing for Oracle Database."

25 And Mr. Hampton testified that he had no

1 understanding about how Oracle does its pricing. He became
2 irrelevant on this database question.

3 Next slide is the statutory damages.

4 I went over this on the verdict form. 93 works.
5 And these works are in tab 1A of your juror notebook.
6 There's a hundred of them, but we are only asking for 93.

7 And so 93 times \$150,000 is \$13.9 million
8 because you can award 150,000 if you find what happened
9 here was willful.

10 And here's the tortious interference damage, the
11 lying damages, \$194.1 million, and those were on the
12 verdict form.

13 Why are we asking for this? Because of those
14 lies.

15 The evidence is -- I showed you this in opening.
16 How many Rimini customers were told the truth? At the end
17 of this trial you know it was zero except Mr. Leake.

18 The evidence. Who would have gone to Rimini?
19 They would have had no credibility if they told the truth.

20 They found two customers, Bausch & Lomb and XO
21 Communications, who you've heard a lot about, but they're
22 only two customers, but even they would not say they would
23 have gone to Rimini, they just said they wouldn't have gone
24 to -- back -- they wouldn't go to Oracle -- they wouldn't
25 stay with Oracle.

1 But Elizabeth Dean explained to you she took
2 into account customers like that that were going to leave
3 anyway. No one would have hired Rimini.

4 This was longer than the 20 seconds timers.

5 I read out loud to you, to Elizabeth Dean, 17
6 customers' testimony. And she explained to you how this
7 related to her opinion. Because everybody who was deposed
8 in this case, every customer agreed they would not have
9 gone to Rimini if they were illegal.

10 So -- and then here's the damages for computer
11 fraud. The 14.4 million is just the customers during the
12 period when Mr. Hicks was analyzing his downloads, and
13 \$34.9 million is the entire Siebel business, and 27,000 is
14 the cost of investigation.

15 So let's go to slide 59.

16 The only thing -- Rimini is saying that the
17 damages should be 9.4 to \$14 million. That -- they're
18 telling you that is a fair number.

19 This company broke the law, they lied, and now
20 they're telling you it's a fair number.

21 Think about it. If this was a fair number, why
22 would they be telling you this?

23 This is the last big lie in the case. And now
24 we know it was planted early on with Mr. Hampton in a
25 deposition by Seth Ravin.

1 This is the same company that lied to customers,
2 that lied to their sales and marketing people, that lied to
3 the Court, and now they're telling you "this is the right
4 number to award, please believe us."

5 One reason they are saying this is they say,
6 "well, gee, we had other competition."

7 Now, the evidence said that until October of
8 2008, the only competition was this TomorrowNow, which went
9 out of business and about how you've heard about. They had
10 no credible competition.

11 In fact, their documents showed that -- even as
12 late as 2009, that they knew the customers were going to
13 stay with Oracle if they didn't come with -- to Rimini
14 Street.

15 Mr. Maddock wrote, "we have no competition."

16 The sales FAQs say, "software licensees are
17 typically evaluating between moving to Rimini or the
18 software vendor Oracle."

19 The sales and marketing witnesses, Mr. Maddock
20 and Mr. Rowe, both agreed their most frequent competitor
21 was Oracle.

22 Slide 63.

23 You heard a lot for a while about all these
24 companies, but the end of the day it boiled down to this
25 slide; self-support.

1 You heard about all the risks, about how that's
2 about driving without insurance. Only 5 to 10 percent of
3 the time, according to Mr. Rowe, did self-support compete
4 with them directly. In less than 5 percent of the time did
5 consulting firms compete with them directly.

6 And Elizabeth Dean told you she took that into
7 account when she used her attrition rates.

8 When we talked about the other third-party
9 providers this became comical. NetCustomer, LegacyMode,
10 and Abtech only took two customers collectively. These
11 companies were like unicorns that nobody ever heard of
12 before this case.

13 Versytec wasn't even selling the right product.
14 And Spinnaker only sold JD Edwards support. And by 2009
15 Rimini was in the process of destroying Spinnaker. They
16 were never for choice, they were about burying Spinnaker.

17 So at the end of the day it came down to
18 Mr. Hampton with a made-up damages theory, a new story to
19 tell you, something else Rimini made up called value of use
20 for avoided costs.

21 Next slide.

22 He said, "I did, as I said in my direct, develop
23 my own theory."

24 He talked about hundreds of cases, and he'd
25 never given an opinion about this before. He came up with

1 it just for you and Rimini.

2 It had nothing to do with his professional
3 standards, it had nothing to do with accounting standards,
4 and it compared to Elizabeth Dean, who was using standard
5 methodologies.

6 This is how they tried to illustrate it for you.
7 I think it was from opening statement, maybe it was some
8 other part of the trial. But we put Harry Potter in the
9 middle.

10 They tried to say, "well, we were only
11 infringing at the edges."

12 But the actual evidence shows they were
13 infringing through the whole thing. They weren't taking a
14 few pages out of Harry Potter, they were taking the whole
15 book.

16 And let's talk about that avoided cost theory.
17 Here's how that theory works.

18 You have a car crash. Someone hits you. They
19 cause your car \$4,000 worth of damages because they've got
20 detective brakes.

21 To fix those brakes, it would have only cost
22 them \$200. They could have avoided the cost by paying
23 the\$200. So rather than paying you \$4,000 for the damage
24 they've done to your car, under this damage theory, they
25 pay you \$200.

1 The example that I confronted him with was, I
2 asked him what about a blowout preventer in the Gulf of
3 Mexico that could be fixed for a thousand dollars, and I
4 asked -- and I asked, "should you look at what the Gulf
5 would have looked like in your but-for world?"

6 He said, "Yes, you can frame it that way."

7 But then he realized he had a problem because I
8 asked him the question, "So is it your opinion that the
9 proper measure of damages is the value of use, that is, the
10 thousand dollars to repair the blowout preventer?"

11 And he said, "The circumstances are different
12 and so there would be a different method."

13 I said, "That would be ludicrous to say that,"
14 because it is ludicrous.

15 And he says, "I don't know."

16 He had to admit that his avoided cost has
17 nothing to do with theories of lying because not lying is
18 always free.

19 It wasn't just ludicrous, it became offensive.

20 I asked him about what do you do with someone
21 who steals from investors? How do you deal with that? Is
22 it just the -- do they just get the value of not lying?

23 And he said, well, you have -- real question,
24 "when an investor loses their money to a crook, maybe they
25 would have found another one."

1 And then, in his world, you would actually say,
2 well, they would have thrown that money away anyhow.

3 And in another case we learned, Ajaxo -- I
4 painstakingly read him his deposition in that case, where
5 he took that same theory of avoided cost, and he multiplied
6 the number by six.

7 Why? Because he was working for the plaintiff.
8 He called that a loaded question. And it was. But it was
9 factually true.

10 Instead of \$14 million, he would have multiplied
11 it by 6, which is \$64 million, which was PeopleSoft only,
12 which is higher than Elizabeth Dean's number.

13 Mr. Hampton talked repeatedly about assumptions.
14 He said, "I make assumptions constantly to calculate
15 damages, and I don't have time to go through with you all
16 these assumptions."

17 These were things he was making up.

18 Even if Mr. Hampton opened up his fairytale book
19 of avoided costs, he had no facts. He just assumed.

20 He had -- he made only PeopleSoft assumptions.
21 And then he made up the fact that he did this 75 percent,
22 15 percent, 10 percent calculation.

23 Do you remember when I spent time on that? I
24 spent time on that because he was making that up. His
25 avoided costs ignored Siebel and JD Edwards.

1 But the final thing he made up was Rimini could
2 have done this remotely from India; one of the last of the
3 walls of lies to come down.

4 He assumed a brand-new business. Rimini's
5 actual business was 80 percent Rimini environments, zero
6 percent purely remote, because they all depended on the
7 fixes and updates, and all from the US. And now it was
8 going to go 100 percent to India, and he just assumed that
9 would work.

10 It turned out the customers don't want offshore
11 support. We showed standard language in document after
12 document saying that.

13 It turned out -- he said, well, it would only
14 cost \$19,000 to hire an engineer from India. It turned out
15 the consultants were \$75,000, which makes the cost four
16 times higher. And if you take 9.4 times 4 and multiply it
17 by 6, instead of 57.7 million, you get \$225 million.

18 In fact, he said, "Well, those are only
19 consultants."

20 Well, Rimini's documents showed in 2007 they
21 knew how much employees in India cost, \$60,000. That's
22 three times as much. That gets you to 168 million when you
23 multiply by six. Elizabeth Dean is much less than that.

24 He made up everything he said about India and
25 called it an assumption.

1 He didn't check the assumptions. He assumed
2 they would have the same number of customers. He assumed
3 it was acceptable to work from there. He assumed customers
4 would build their own environments.

5 Great news, Customer, we've been building all
6 these things for you, now we want you to do it yourself,
7 and it's going to take weeks and months to do that.

8 He assumed you would be able to finance all
9 this, even though he didn't talk to a single lender.

10 I showed him documents where Rimini said "this
11 doesn't work"; and he said "I assumed the opposite of
12 that."

13 The ship in a bottle, in a bottle.

14 He assumed they solved that problem. And in
15 October 2010, they still had not solved the problem.
16 Remote, whether it was from India or the United States, was
17 built into several levels of bottles.

18 He ignored the wild, wild west that the Rimini
19 engineers were talking about. Remote access was like the
20 wild, wild west. And here's what the -- here's what people
21 wrote about remote access.

22 "It defies our business model; it's literally
23 insane; pain; hate; ridiculous; last resort; shooting
24 ourselves in the foot if we do any of these deals."

25 And what did they tell you in this trial?

1 That's just whining; his opinion; commentary; I disagree;
2 we could have do that.

3 None of that was true.

4 Mr. Hampton made up testimony at least four
5 times -- slide 90 -- slide 90 -- that was the opposite of
6 what he told you at deposition. And I showed you those
7 tapes.

8 Slide 92.

9 He relied for his head counts on Mr. Benge, and
10 Karen talked to Mr. Benge at length about how he just made
11 up those numbers, didn't have any calculations, didn't have
12 any errors, it was just something he came up with. That
13 didn't quite turn out to be true.

14 But what Mr. Hampton initially said was he
15 relied on Mr. Benge. When he did that, he violated his own
16 professional standards. And I went through these
17 professional standards.

18 It has to be testable. And Mr. Benge said he
19 had no calculations, nothing that anyone could check.

20 Mr. Benge had to be qualified. Mr. Benge said
21 there was no formula for this, it wasn't a scientific
22 calculation.

23 It had to be corroborated. It was not
24 corroborated. It was -- only came from Mr. Ravin
25 beforehand in an earlier deposition.

1 And was it just for purposes of this litigation?

2 Yes, it was.

3 More numbers were made up by Rimini accounting.
4 I showed you this document with Mr. Hampton. This is what
5 the document that Mr. Zorn gave him.

6 And this is where they were telling him, "Here
7 is where we want you to end up." In just five of nine
8 years -- and you remember, this is the one where it turned
9 out they did numbers for US engineers and India engineers.
10 And for the US engineers, which is the numbers they didn't
11 want to use, for five of the nine years at issue in this
12 case, the numbers were 25.3 million.

13 If you make that \$40 million over nine years and
14 multiply that by six, as Mr. Hampton did in his other case,
15 just the PeopleSoft lost profits would be \$240 million.

16 Elizabeth Dean was being very, very
17 conservative.

18 When Mr. Hampton was confronted with this, that
19 he was contradicting Mr. Zorn and Mr. Benge, he just threw
20 them under the bus, said the same thing about both of them,
21 they're confused, the Rimini witnesses are confused.

22 I also showed you that Rimini's accounting
23 department prepared Mr. Hampton's calculations. You -- he
24 denied this.

25 But if you look at DTX 3018 and PTX 6008 and

1 compare them, you'll find out that Mr. Hampton wasn't doing
2 his work, that these schedules were coming from the Rimini
3 accounting department.

4 At the end of the day what we learned was the
5 end of the story, this didn't come from Mr. Bengé.

6 It all broke down during the examination of
7 Mr. Hampton because then what he said was, "oh, no, no, no.
8 So Mr. Bengé wasn't telling me it was going to be doubled.
9 I asked him give me the head count of the people would be
10 doubling."

11 He said going into the meeting he already had
12 the assumption there would have to be twice as many people
13 in certain categories. So he didn't get that from
14 Mr. Bengé.

15 Where did he get that? The one place it came
16 from, a 2011 deposition of Seth Ravin.

17 This man who came to you and said, "I'm an
18 expert," went to Mr. Bengé having heard that Mr. Ravin said
19 the head count should be doubled, he walked into Mr. Bengé,
20 according to his own testimony, said "tell me which
21 categories should be doubled."

22 Mr. Hampton's testimony was the last bit of
23 concealment in this case, and it broke down.

24 The whole analysis of Mr. Hampton started with
25 Mr. Ravin saying "we could have done this all legally and

1 properly with only twice as many people."

2 It was the buried lie of Seth Ravin that they
3 did not want you to know about because they want you to
4 award damages such as they're suggesting and not as
5 Elizabeth Dean is suggesting.

6 It's time for the truth though. We want you to
7 fill the verdict form based on the truth.

8 The truth has come out. The library existed.
9 The cross-use existed. The environments existed. They
10 were full of Oracle software. And the proper amount of
11 damages is not something that was fed to an expert by Seth
12 Ravin.

13 Now I'm going to get a chance to talk to you one
14 more time, much more briefly. You're now going to hear
15 from the defense.

16 We're very appreciative of your time and
17 patience, and I look forward to having a few last words
18 with you.

19 THE COURT: Thank you, Mr. Isaacson.

20 Ladies and gentlemen, I'd rather not interrupt
21 the defense closing argument, so I'm thinking to take a
22 short break at this time for 10 to 15 minutes, and that way
23 we should be able to go straight through with the defense
24 closing, and then there would be a fairly short rebuttal on
25 behalf of plaintiff.

1 So you still can't discuss the case or allow
2 yourself to be exposed to anyone who is discussing the
3 case. You still should be keeping an open mind, and we'll
4 step down, take a short break.

5 When you're ready to come back in, we'll get
6 started. Thank you.

7 You may go ahead and step down.

8 (Recess from 1:20 p.m. until 1:39 p.m.)

9 (Jurors enter courtroom at 1:39 p.m.)

10 COURTROOM ADMINISTRATOR: Court is again in
11 session.

12 THE COURT: Have a seat, please.

13 The record will show we're in open court. The
14 jury is all present. The parties and counsel are present.

15 And, Mr. Webb, it's your opportunity to present
16 the defendant's closing statement at this time.

17 MR. WEBB: Thank you, Your Honor.

18 Why? Why is it that Oracle spent nearly two
19 weeks putting on evidence of conduct Rimini Street had
20 already admitted trying to reprove infringement that the
21 judge has already found?

22 In opening statement I told you, I told each of
23 you, that Rimini had copies of Oracle software on their
24 servers, lots of copies.

25 I told you that we'd downloaded files from the

1 Oracle website many times. I told you we reused updates
2 for some clients and cloned environments for some clients.
3 I admitted to that.

4 In fact, despite Mr. Ravin's good faith belief,
5 I told you the Court found that Rimini Street had infringed
6 Oracle's copyrights.

7 It is Oracle's burden to prove that our
8 infringement caused them damages.

9 But what did they do? They spent nearly two
10 weeks calling witness and witness, piling on document after
11 document, trying to prove to you something that you already
12 knew and what you knew from jury selection. Why?

13 I have a son. His name is Truman.

14 Back when he was in the third grade, I helped
15 coach his baseball team. By coaching, that's sort of a
16 misnomer. I was basically in charge of making sure the
17 kids didn't hurt themselves in the dugout.

18 You see, all the other dads, they knew something
19 about baseball. They would help the kids with their swing
20 and their fielding technique and their throwing technique,
21 and my job was just to make sure they didn't jack around
22 too much.

23 But when a game came along, while the other dads
24 were telling their sons you got to do this, you got to do
25 this, you got to do this, I simply just had one piece of

1 advice.

2 In a baseball game with little boys, it's a lot
3 of activity. First of all, they're with their buddies,
4 and, boys, when they're with their buddies, all they want
5 to do is play, horse around, wrestle.

6 And then there's the dirt. Nothing is more
7 fascinating to a third-grade boy than dirt. They like to
8 play in it, they like to throw it, they like to pour things
9 into it.

10 And then, during the game, when they're trying
11 to hit the ball, you got mom in the stands carrying on a
12 full-on conversation with their son as he's trying to hit
13 the ball.

14 And while the other dads are giving him
15 technical advice about exactly how to do their baseball
16 thing, I only had one piece of advice: Watch the ball.
17 Just keep your eye on the ball.

18 And a funny thing happened. When they could
19 actually do that and tuned out all the distractions and
20 diversions and all the noise, if they focused on that one
21 thing, just keeping their eye on the ball, they could
22 actually hit it, they actually could get their job done.

23 That is the same advice that I have for each and
24 every one of you in this case. Ignore the distractions,
25 ignore the diversions, and just keep your eye on the ball.

1 Ladies and gentlemen, I give to you the ball.
2 This is the most important instruction in the entire case.

3 This is the instruction about causation. And if
4 you follow this instruction, as you're required to do,
5 Oracle's claim for \$229 million in lost profits is dead.
6 And it died Thursday, September 24, at 9:51 a.m.

7 The reason Oracle spent all of this time, almost
8 two weeks of trial, telling you about all the copies and
9 downloads is because they don't want you to see the ball.
10 That's something that you did not see in two hours of
11 closing argument from Oracle's lawyers. Why?

12 They hope that you'll be so distracted by these
13 acts of infringement, the number of copies and downloads,
14 that you'll forget that the ball even exists.

15 This is the instruction on causation, and
16 causation is a very important legal principle that it's
17 critical, absolutely essential, that you all understand.

18 Causation is that link between Oracle's proof of
19 infringement and their proof of money. They have to link
20 together, and that link, that critical link, is called
21 causation.

22 Let me give you an example of what that is.
23 Let's say you have a car. You get a notice from the
24 manufacturer that your alternator is defective, the
25 alternator doesn't work.

1 The next day, you're driving home from work.
2 You go to a stoplight. There's a car stopped in front of
3 you. You go to step on the brakes, the brakes don't work.
4 You step on them harder and harder and harder, and, boom,
5 you hit the back of the car.

6 Now, the alternator is defective. But did it
7 cause the accident? The defective alternator, no question
8 it's defective, and sooner or later the manufacturer will
9 have to be held accountable for the defective alternator.
10 But that's not the issue.

11 Did it cause the crash? No, of course, not.
12 The brakes failed and they caused the crash.

13 It's not fair to hold the manufacturer of the
14 alternator responsible for something that it did not cause.
15 It's not fair and it's not the law.

16 Simply put, you haven't seen any real proof from
17 Oracle for that causation piece to tie the infringement to
18 the money.

19 What they've resorted to is rank speculation and
20 guesswork from a single paid expert witness who was on the
21 stand for about an hour in a three-week-long trial. And
22 his job was simply to tell you what he thought our
23 customers were thinking.

24 Simply put, Oracle cannot meet its burden. It
25 cannot meet the burden to prove causation because they

1 cannot show that our infringement caused their lost
2 profits.

3 They have to prove that our infringement, the
4 things that we did the Court found to be infringing, local
5 hosting, reusing updates, using automated downloading
6 tools, that those things caused their lost profits. The
7 evidence simply does not exist.

8 They needed to make that connection. They
9 needed to put that link together. They relied on
10 Mr. Yourdon to do that. And when he left the stand at
11 9:51, Thursday, September 24, their claim for lost profits
12 died. Their own expert broke the causal chain.

13 Now, one of the things that's in dispute in this
14 case, among many things in dispute, is where our customers
15 come from.

16 You've heard testimony in this case about how
17 Oracle loses roughly 5 percent of its customers every year.
18 That's called churn. It's called attrition.

19 Every year 5 percent of these folks leave. And
20 you've seen testimony, you've seen the documents, they
21 leave for a bunch of reasons, but they leave every year.

22 The big dispute is you have two world views.
23 You've got Oracle's world view which says all our customers
24 come out of this group, the 95 percent who are apparently
25 overjoyed to be Oracle customers.

1 We will tell that you our customers are already
2 out the door. They are tired of the service, they're tired
3 of being mistreated, unresponsiveness, they're just ready
4 to get out to look for something else. And we provide them
5 a place to land.

6 So who do you believe? Are they these folks, or
7 are they these folks? Because this churn happens every
8 year. And they have to go somewhere.

9 Mr. Yourdon answered that for you. On the stand
10 on Thursday morning, September 24, he was asked this
11 question:

12 "All right. So in the real world we know that
13 Rimini's customers are not part of the 95 percent that stay
14 with Oracle, they're part of the 5 percent that are left;
15 correct?"

16 His answer, "Yes."

17 Their own expert told you that these folks are
18 coming out of the 5 percent who leave every year. And that
19 stands to reason.

20 For example, let's say we're syphoning customers
21 who are perfectly happy to be at Oracle. We would take
22 those folks away from Oracle, dislodge them from Oracle.

23 You would expect that attrition to go up; right?
24 You'd expect that number to increase because we're taking
25 folks from here.

1 The attrition chart would look like this because
2 every year, as Rimini grows and starts getting more
3 customers, the pie would get bigger and bigger and bigger.

4 But what did you see in this case? You saw
5 this. Fewer people are leaving, not more.

6 That shows you that that Mr. Yourdon was right
7 and that we're right, that we're taking people who are
8 going to leave anyhow.

9 And our biggest product line, as you heard in
10 this case, is PeopleSoft. That's the vast majority of
11 products that we service.

12 Look what's happened to the attrition. On
13 PeopleSoft for Oracle, it's been cut in half. If we were
14 truly taking folks out of here and not from here, that
15 simply would not exist.

16 Oracle knows this to be an issue. They have to
17 know this is an issue.

18 They called Mr. Yourdon up to the stand to
19 provide that causal link, and he did not. That's why you
20 didn't hear one word about the ball in two hours of closing
21 argument.

22 You would have expected for someone that
23 important to their case to be on the stand for hours and
24 talking to you in great detail about how causation is
25 proved.

1 That's not what you saw. Now you saw that when
2 it came to them proving about where all the software goes
3 at Rimini Street, detailed charts and graphs, tracking
4 software from point A to point B and cross-use and
5 downloading.

6 I mean, that was impressive stuff.

7 And then Ms. Dean, when talking about the money,
8 you saw charts and detailed graphs and tables, again very
9 impressive stuff.

10 So they got this piece really down to spades,
11 and this one too. But when it came to link them,
12 Mr. Yourdon said he would know what the customers were
13 thinking. That's the sum total of what he said.

14 He said that, "In my opinion, what they
15 generally would have done is renewed at the support rate
16 that they typically saw," the historical support rate. He
17 told you what our customers were thinking. That's the sum
18 total of his deposition.

19 And what did he rely on? How did he get to that
20 point? He told you that he relied on some depositions.

21 Now, let me set that table for you here. At
22 that time we had about 450 customers, Rimini Street
23 customers.

24 Oracle's lawyers picked 17 of those for
25 deposition, and they took their depositions. Mr. Yourdon

1 reviewed all 17 of those depositions. But he admitted
2 this:

3 "QUESTION: And you didn't select those 17
4 customers from Rimini's customer list, did you?

5 "ANSWER: No, I did not.

6 "That's not a representative sample that you
7 chose?

8 His answer, "No."

9 "In fact, it was Oracle's attorneys that
10 selected those 17 customer deposition transcripts that you
11 reviewed, sir; isn't that correct?

12 "My understanding is that they gave me the
13 transcripts of all that they deposed, but I believe that
14 they were the ones who chose which customers they did
15 depose."

16 So Oracle's lawyers picked presumably the 17
17 best customers for their case, took their deposition, and
18 then handed them -- cherry picked them and handed them to
19 their expert so he could tell you what they're thinking.

20 "QUESTION: And in connection with that
21 analysis, you did not conduct any mathematical or
22 statistical analysis regarding whether Rimini's clients
23 would have renewed at Oracle's historic retention rate, did
24 you?"

25 His answer is no, he did not.

1 And then Ms. Dean. Ms. Dean relied upon the
2 causation proof that Mr. Yourdon provided to you.

3 "QUESTION: And you don't know what questions
4 the customers asked Rimini, do you?

5 "ANSWER: I depend on Ed Yourdon, for example,
6 his testimony was pretty clear about what customers
7 consider.

8 "QUESTION: What customers consider, but he
9 didn't have any direct evidence of what the customers asked
10 other than the 17 depositions; correct?"

11 Her answer, "I think that's correct."

12 And she goes on,

13 "And, finally, you don't know the factors that
14 those 228 customers actually concluded were deciding
15 factors in making their decision to leave Oracle and to go
16 to Rimini, correct, Ms. Dean?

17 "Yes. If you're talking about each individual
18 customer, that evidence has not been provided in this
19 case."

20 Let's talk about the ball. It says, "For Oracle
21 to recover damages, it must prove that the infringement
22 caused damages."

23 Then it goes on to say, "Infringement caused
24 damages if the infringement was a substantial factor in
25 causing the damages."

1 And then we have this. "Conduct is not a
2 substantial factor in causing harm if the same harm would
3 have occurred without that conduct."

4 If people were already leaving, that's not
5 causing lost profits.

6 This means that if a client left Oracle
7 International Corporation for reasons unrelated to Rimini
8 Street, Rimini Street's infringement, there is no causal
9 relationship and therefore no lost profits damages as to
10 that client.

11 In other words, if these folks were leaving for
12 reasons other than Rimini Street, they get no lost profits
13 for those customers.

14 Here's something interesting. Mr. Yourdon would
15 have Bausch & Lomb in the group of customers that were
16 happy to stay at Oracle.

17 You heard Mr. Baggett testify just last week.
18 Did he sound like he was one of those customers that were
19 more than willing to stick around at Oracle?

20 What he told you was this. He said that he had
21 decided to leave Oracle long before he ever heard of Rimini
22 Street because of poor service, unresponsive service.
23 Because of the treatment that he received at the hands of
24 Oracle, he was going to leave. He was on his way out the
25 door.

1 He said that he was not going to go back to
2 Oracle no matter what. But Mr. Yourdon said, no, he's one
3 of the folks who would have stayed.

4 Now, let me ask you this. If Bausch & Lomb and
5 Brian Baggett made the cut for 17 of the best customers for
6 Oracle, can you imagine what the rest of those folks would
7 say?

8 See, Mr. Baggett represents the danger of having
9 an expert paid witness tell you what other people think.

10 He told you that Bausch & Lomb was going to
11 stay, that Rimini pulled them away from the company. But
12 Brian Baggett told you that's not at all the case. That's
13 the risk of relying on an expert witness in place of proof,
14 in place of real proof.

15 Now, this is another instruction. Let me tell
16 you a little about instructions. You're hearing that
17 thrown around a lot. Let me try to give some color to what
18 that means.

19 In evenings when you all go home and go about
20 your day-to-day lives, you may be wondering what all these
21 lawyers do and the judge and his staff do.

22 The instructions is a big part of it. This is a
23 very huge undertaking by everyone. And the judge and his
24 staff work really hard to give these to you because these
25 are critically important.

1 You can think of them as the user manual for
2 being a jury. They tell you the rules of the road, how you
3 do things, what you're supposed to look at, and what you're
4 supposed to be governed by because it's the law.

5 Here's another one of those very important
6 rules.

7 "Your award must be based on evidence, not
8 speculation, not guesswork, and not conjecture."

9 And if you follow this instruction, you also
10 have to disregard entirely Mr. Yourdon's testimony because
11 that's all it is. And Brian Baggett proved you can't
12 believe his speculation.

13 So what did you see?

14 All right. You may have been scratching your
15 heads a little bit when you saw us play all these customer
16 videos because in this every single one the customer's
17 asked the question, "If you knew Rimini infringed, would
18 you have gone with them?" And every single one said "no."

19 And you're thinking why is Rimini Street playing
20 these customers when they're obviously proving Oracle's
21 case?

22 What you just saw there was called the
23 no-brainer. It's a lawyer tool, a trick, that is meant to
24 achieve something other than what the question really asks.
25 Let me explain how that works.

1 Let's say I went to dinner last night at the In
2 'n Out Burger. And, by the way, we don't have those in
3 Kansas City. It's like dessert, it is so good. But let's
4 say -- oh, man, they're good.

5 Let's say you went there for dinner last night.
6 The next day -- this tool would be used like this. Well,
7 if In 'n Out Burger was closed, would you have eaten there?
8 Well, of course not, you're not going to eat there, it's
9 closed.

10 But then the logical extension goes like this.
11 Well, obviously, then, you would not have eaten at all last
12 night. Because it was closed, you would have stayed with
13 the status quo.

14 Now, that doesn't make sense, does it? I mean,
15 you're hungry, you obviously went to In 'n Out Burger
16 because you're hungry. You might go to Taco Bell or to
17 McDonald's. You might even go back to your house and do a
18 little self-support and fix yourself a sandwich.

19 It doesn't fit. It's meant to be one of those
20 questions that sound really logical, and you go, wow, that
21 makes perfect sense, but when you dig in, it doesn't. And
22 it's founded upon a very weird, back-to-the-future sort of
23 hypothetical.

24 The customers were asked in 2011, if you would
25 have known in the future a decision would be made that

1 Rimini was infringing, would you then in the past have made
2 a different decision about what you would have done?

3 There are multiple time shifts going on there.
4 It does not prove what they claim it proves.

5 And here's what else we know. We're not the
6 only ones who caught this little trick. Rhonda Minks, you
7 may have seen her deposition video. She's the one who was
8 tickled pink by Rimini's services.

9 She was asked the same question.

10 "And if Brazoria County knew that it was a
11 violation of PeopleSoft license and it knew that Rimini
12 Street would do that, would it have contracted with Rimini
13 Street?"

14 She's a bright one. Here, listen to her answer.

15 "I don't know. I don't think you want me to --
16 I mean, if you're saying, 'Hey, somebody is going to do
17 something wrong; are you still going to go with that?' I
18 mean, the common answer would be, no, you're not going to
19 want to do something wrong."

20 She caught on to the little trick here that by
21 answering that question, it's not achieving what they
22 really think it wants to achieve.

23 And here's the poster child as to why this
24 question doesn't prove anything. It's Brian Baggett. He
25 was asked that question in his deposition and asked this

1 question at trial.

2 "And, Mr. Baggett, during your deposition, you
3 were asked if you would have gone to Rimini Street if you
4 thought they were infringing?"

5 His answer, "I believe I answered that, yes.

6 "And what was your answer?

7 "No."

8 He said on the stand in this courtroom right in
9 front of you, he said he would not have gone to Rimini
10 Street if he thought they were infringing.

11 But what else did he say?

12 "Back when Bausch & Lomb was considering options
13 for software support, if Rimini Street was not available as
14 an option for whatever reason, would Bausch & Lomb have
15 gone back to Oracle for support?"

16 His answer, "No."

17 Do you remember the third essential truth that I
18 talked about in opening statement? I said in this case
19 we're going to establish these three essential truths. The
20 third one is there's no evidence that any Rimini client
21 would have stayed and paid with Oracle.

22 Case in point, Brian Baggett.

23 And we'll get to these other depositions, as
24 well, and we'll show you with all these customers, they had
25 already made their decision to get out, and we just

1 provided a place for them to land.

2 One thing we do know for sure, no customer took
3 that stand and said, "You know what, if I would have known
4 this, I would have gone back to Oracle."

5 No customer took that stand and said, "Rimini
6 lied to me, they misled me."

7 And no customer took that stand or testified in
8 any deposition that, "Rimini didn't treat me well. They
9 gave poor service. They did not follow up on every promise
10 they made."

11 What did you hear from Brian Baggett? He said,
12 "They never misrepresented anything to me. They always
13 followed up on everything."

14 And here's something else you need to know.
15 Every video of every deposition taken by Oracle and played
16 to you in this trial, every single witness had a common
17 theme, "We love the service we get from Rimini."

18 Oracle spent two weeks pounding on issues
19 already admitted, to reprove infringement already found.

20 They spent two weeks calling my clients liars.
21 They were hiding the ball, assuming that by pounding these
22 issues, by hitting these documents and witnesses over and
23 over and over again, you would forget about the ball.

24 They called my client liars 72 times in the
25 closing argument you heard today; 72 times. Yet they

1 couldn't find it within their allotted two hours to mention
2 the ball one time.

3 They have a burden of proof here, a burden of
4 proof. You heard about it from the judge's instructions.

5 And this is one of those other really important
6 things you have to understand, just like causation. I will
7 now talk about the burden of proof.

8 Now, some of you may think that when you come
9 into a court and the parties are 50-50 even, and one party
10 just simply has to slightly get more than the other, game
11 over. That's not how it works.

12 Oracle has the burden of proof to establish the
13 infringement caused their lost profits. They come in with
14 nothing. They have to establish a burden of proof to get
15 over 50 percent in order to meet their burden.

16 They may bring forth some evidence, some
17 documents. But if those documents are proved to be
18 irrelevant or otherwise countered, they go back down.

19 They may show you a customer deposition, but
20 then when you realize the customer doesn't answer the
21 question, it goes back down.

22 And that process continues until their case is
23 closed. And if they have not reached the 51 percent, they
24 simply don't get lost profits. Oracle has not proved their
25 case.

1 You've been here. You've seen the evidence.
2 You've seen the rule that you have to follow now. They've
3 not proved any Rimini process caused them harm. We'll get
4 to that in a minute.

5 They didn't prove that 228 customers would have
6 stayed and paid, and they did not prove that any lie or
7 misrepresentation was relied upon by a client and was the
8 reason that client chose to leave Oracle. We'll talk about
9 that soon as well.

10 Now, they spent two weeks putting on their case.
11 As you saw, we put on our case in just a few days, the vast
12 majority of which was their cross-examination of our
13 witnesses. And we tried to focus on, again, our three
14 essential truths.

15 Just like we talked about in opening, we came
16 back to this and went back to each and every one of those,
17 and we proved to you what was going on.

18 Now, let's talk about the first one first, and
19 that is, customers have the right to choose Rimini.

20 All right. You saw the evidence and you heard
21 the testimony in this case that Oracle didn't actually
22 write the software for PeopleSoft or Siebel or JD Edwards.

23 They bought it when they bought the companies,
24 and so to the extent that you may think that this research
25 and development was related to writing the code for these

1 products, it wasn't.

2 Now, Oracle acquired PeopleSoft and these other
3 companies to get access to their customers, 14,000
4 customers, and more than that to get access to the golden
5 goose of maintenance profits.

6 But they were on a buying spree, and they wanted
7 to buy these companies to get access to the customers and
8 the money. That's exactly what they did.

9 But because of the way they acquired PeopleSoft,
10 they could not get access to a lot of their confidential
11 documents.

12 In a lot of transactions you have a chance to
13 look through the company's books before you buy them. In
14 this transaction, that wasn't possible.

15 So they spent billions of dollars to buy
16 PeopleSoft, and then, and only then, could they see these
17 confidential documents including these very important
18 contracts with customers.

19 They didn't know that they would face
20 competition for this maintenance business.

21 Ms. Catz was on the stand, and I asked her,
22 "But did you not think about whether Oracle
23 would be the exclusive option for maintenance; right?"

24 And she answered, "I -- I didn't consider
25 anybody else doing it."

1 "QUESTION: Because, in fact, you didn't -- you
2 don't remember thinking about third-party support at all
3 when you acquired PeopleSoft, true?"

4 Her answer, "That's correct."

5 Imagine the executive suite at Oracle, after you
6 buy this company for billions of dollars, and then you
7 realize that all these contracts said a third party can
8 provide the maintenance too. They hadn't planned on that.
9 That wasn't part of the deal. But they were stuck with it
10 at that point.

11 Now, I told you in opening that Rimini Street
12 stood in the shoes of its customers, and it could provide
13 services for those customers within the scope of their
14 agreement with Oracle. They acted on behalf of the client,
15 and if the client's not authorized, Rimini Street is not
16 authorized.

17 I asked Ms. Catz the same question.

18 "But a third party can stand in the shoes of the
19 licensee and perform the acts the licensee is permitted to
20 perform under the contract?"

21 "ANSWER: Yes, as long as that's actually
22 permitted in the license."

23 Now, I want to address one little slight issue
24 that kind of came out during trial, but I don't think
25 anyone focused on it, and that's this concept that in order

1 to provide third-party service, you've got to be licensed.

2 Now, to the extent any of you think that's the
3 case, it's not. This testimony from Ms. Catz establishes
4 that already.

5 More than that, when asked -- Juan Jones was
6 asked in his deposition,

7 "During your time at Oracle, are you ever aware
8 of Oracle granting a license to a third party for the
9 purposes of providing support for PeopleSoft's products?"

10 His answer, "I am not."

11 Rimini Street has the right to stand in the
12 shoes of its customer. It has the right to perform
13 third-party maintenance. It's not whether they could do
14 it, the question is how they do it.

15 And the Court found that some of the things we
16 did were outside the scope. But the question of whether
17 they can do it is not at issue in this case.

18 You saw this quote from Ms. Catz during the
19 other side's closing argument.

20 "Does the company have any philosophy toward
21 these competitors, towards competition?"

22 She said, "Yeah; bring it on. The truth is
23 competition makes you better. It keeps you sharp, very,
24 very sharp."

25 But is that what you saw when you saw the

1 depositions of Oracle's witnesses and the documents?

2 This is what you saw when it comes to
3 competition and my client. "F Seth and his Rickety Street.
4 Let's be sure we don't overreact to these gnats."

5 And he goes on, "Let's go on the offensive."

6 Now, you also heard about a SWAT team designed
7 to engage in the war against third-party providers. Does
8 that sound like bring it on to you?

9 And here's the other question. When we talked
10 about all these customers leaving for various reasons, you
11 heard some testimony about they either go out of business
12 or bankrupt or they usually stick around. You heard
13 testimony to that effect, right?

14 But Oracle's own documents reveal there's a lot
15 of reasons these folks leave Oracle support. And more than
16 that, there are a lot of these third-party providers.
17 There are a lot of these providers out there for customers
18 to choose, and they knew a lot about them. They went
19 through an analysis about what they could provide and how
20 they could provide it.

21 But there's the problem. If there are other
22 options in the marketplace, their lost profits case becomes
23 weaker because it goes back to this. It goes back to this
24 causation.

25 Because if a client left for some reason

1 unrelated to infringement, they can't prove lost profits,
2 so they're kind of in a pickle.

3 Because on one hand these third parties are out
4 there, but, on the other hand, that kind of hurts their
5 case. So they came up with this device. It's called the
6 vendor-level support, vendor-quality support device.

7 Mr. Yourdon said that, well, there are really no
8 other options that can provide vendor-quality support, so
9 these other third parties, we can ignore them. It's just
10 Rimini Street. They are the only ones who can actually do
11 this.

12 "QUESTION: Did you draw a general conclusion as
13 to that question?

14 "My general conclusion was that none of the
15 companies that you see on this page, taking out Rimini
16 Street, you know, for purposes of this discussion, none of
17 the others represented a viable option."

18 They constructed this false world where the
19 standard is up here and, therefore, they can readily ignore
20 every other option.

21 And during cross-examination, my partner,
22 Mr. Reckers, walked him through all the factors that all
23 these companies think about when deciding to leave,
24 everything from cost to not wanting to upgrade to being
25 unhappy with service.

1 And Mr. Yourdon admitted, yeah, these customers
2 think about those reasons, and they are legitimate factors.

3 But when asked this question,

4 "And to understand why a particular client made
5 a support decision, you have to look at each client
6 individually and determine how each of these factors
7 weighed against those -- that client; correct?"

8 His answer, "Only, again, within the context of
9 whether there was an alternative that was available. With
10 no alternative, to some extent all of these factors are
11 moot."

12 So, in other words, according to Mr. Yourdon,
13 you have a right, but it's not really a right. The fact is
14 third parties are an option, and they have a right to be in
15 this business.

16 The first essential truth is absolutely valid.

17 All right. And one other thing. You saw this
18 slide earlier about how it's basically self-support,
19 consulting firms or third-party providers?

20 One of the things you didn't hear a lot about
21 from Oracle was this combination, this hybrid approach.

22 Mr. Baggett, I asked him, "Hey, listen, if
23 Rimini Street wasn't an option for whatever reason, would
24 you have gone back to Oracle?"

25 He said "No."

1 I said, "Well, what would you have done?"

2 He said, "Well, we were going to self-support
3 that part of the business we could self-support and then
4 farm out the pieces we couldn't, the HR piece."

5 We heard that from several other customers that
6 you'll see their depositions here in a little bit.

7 But the fact is these are not standalone,
8 all-or-nothing options. Clients will do what's best for
9 their company, just like Mr. Baggett did for Bausch & Lomb.

10 All right. We told you all along that these
11 customers did not receive anything they hadn't already paid
12 for. And that's an important concept. I want to make sure
13 you all know this. And forgive me if I'm repeating
14 something that you understand.

15 But Rimini Street does not sell Oracle software.
16 We don't take Oracle software and sell it to someone else.
17 We don't give software to another company unless they have
18 the rights to have it.

19 The fact is no client gets something they
20 haven't already paid Oracle for. Oracle has been paid in
21 full for this. They've got their money. We're not talking
22 about selling the car, we're talking about fixing it when
23 it breaks.

24 Here's an instruction on harm. Again,
25 "Infringement caused damages if the infringement was a

1 substantial factor in causing the damages."

2 Now, I have another question for you. Why is it
3 that in a two-week trial Oracle never once tried to explain
4 to you exactly what Rimini Street does?

5 Not one witness or expert tried to walk you
6 through exactly what Rimini does and how they do it. They
7 put up charts and graphs about software, but they never
8 talked about our business. Why is that?

9 The fact is our process did not cause them any
10 harm. And if you actually understood what is really at
11 issue here, you'd be shocked by their claim when there is
12 no actual harm.

13 Now, we did our best to try to explain that to
14 you, and we probably were a little repetitive, but it's
15 important.

16 Seth Ravin took the stand and told you what they
17 did. Jim Benge took the stand and told you how Rimini
18 operated. David Rowe did the same thing.

19 Again, we're trying to make sure you understand
20 this, make sure you actually have a firm grip on what we're
21 doing. It's really important for your job in this case
22 because of this.

23 And, again, it might be repetitive, but I've got
24 two hours -- I've got to talk about something -- two hours,
25 and I'm going to talk about this.

1 Local versus remote. You all know this by now.
2 But there are two possibilities. If we're hosting it,
3 they'd ship a big box of DVDs, and we'd load them one at a
4 time to create an environment on our servers.

5 Or the client would host those testing and
6 development environments on their servers, and we would
7 remote in over the Internet to work on their software. So
8 two possibilities, local or remote.

9 The fact is customers got to choose which. This
10 isn't like we're hiding this, it's in the contract. They
11 said we'd like local or we'd like remote.

12 Now, listen, I'm not going to tell you that our
13 engineers were delighted about remote hosting. It was
14 harder. It was a pain in the neck. But they did it.

15 And you heard testimony that from day one we
16 could have done all remote. Despite all the India stuff
17 and other stuff you've heard, the fact is technically
18 speaking it's something we could have done from day one and
19 did, in fact, do from day one. It was the customer's
20 choice, and they decided that.

21 The other thing you need to understand is that
22 just because they are local servers, local hosted
23 environments at Rimini Street, doesn't mean we have a big
24 server in the conference room in their main building.

25 The fact is you heard from Mr. Ravin that

1 Rimini's servers are not in the building, they're in North
2 Carolina or some other place.

3 It's an IP address. And those of you who
4 understand what an IP address is will know it's how you
5 type in. You can access any server by the IP address.

6 Now, for remote there are firewalls and security
7 that you have to get through. The bottle, in a bottle, in
8 a bottle, in a bottle thing, let's be clear about that.
9 That was one customer. You heard from Mr. Benge that was
10 just one customer that had a unique situation.

11 But no doubt remote was harder. But it was
12 possible, and the clients made that decision.

13 Rich Allison took the stand and talked about the
14 contracts that Oracle had with their customers.

15 "QUESTION: Can the third party dial in remotely
16 to the customer facility and access and use the software in
17 that way?"

18 His answer, "Yes, I believe that would fall
19 under the access and use.

20 "QUESTION: And so can the third party go to the
21 customer's site and access and use the software there?

22 "ANSWER: I believe so.

23 "And could the third party access the software
24 in the customer's facilities remotely?

25 "Yes, I think so."

1 Oracle admits that, yes, in fact, remote is
2 permitted.

3 Shelley Blackmarr was asked,
4 "Have you supported remote clients whose
5 software is remote on their own sites?

6 "Oh, yes.

7 "QUESTION: Have you ever -- can you think of an
8 instance where you were unable to do your job because the
9 software was at the client site instead of Rimini?

10 "No. Everything that you could do locally you
11 could do remote."

12 I want to take a minute and talk about
13 Ms. Blackmarr. Our first witness that we called in our
14 case was not a powerful CEO and the head of a very large
15 company. It was our point person, the person on the ground
16 dealing with our clients on a day-to-day basis. Shelley
17 Blackmarr. She's a PSE, primary support engineer.

18 Do you remember in opening statement I told you
19 about how important those folks are to our business.
20 They're the people who talk to the client. They're the
21 people who help the client out of bad situations.

22 You heard Mr. Baggett talk about his experience
23 with a primary support engineer. He loved them.

24 This is who our company is. She's not super
25 powerful, maybe she's not an expert on infringement, but

1 that tells you about our company.

2 And the evidence is that we could have applied
3 this remote model on all the products that we service.

4 Now, this question about whether or not harm is
5 caused by local versus remote, I asked Ms. Catz that
6 question. I said,

7 "Is it your view that whether the software's on
8 a local environment or remote of the clients, that actually
9 has harmed Oracle?"

10 Her answer, "Yes, it violates our contract. It
11 violates the license."

12 I said, "No, let me be clear. You're telling
13 this jury that the location of that software, whether it's
14 on Rimini's servers or the client's servers, has
15 financially damaged Oracle?"

16 Her answer: "Yes, the use of it beyond the
17 license damages Oracle, that's right."

18 With respect, I don't think that really proves
19 any damages at all. The location of this software doesn't
20 hurt Oracle at all. There's no financial damage associated
21 with the location of that software.

22 Reuse versus rebuild. Recall how again when
23 we're developing -- when we're installing the software, the
24 client signs an agreement with us, and we basically, for
25 local hosted environments, we would replicate and create an

1 environment on our servers. That's what we just talked
2 about for local hosting.

3 Now, if we've already got one client's software,
4 the vanilla environment, on our servers, and another client
5 signs on and they have the exact same rights, rather than
6 loading those DVDs one at time, sometimes we would clone,
7 again, if they had the exact same rights.

8 So instead of actually loading those DVDs again
9 one at a time, we take the version we already have and
10 clone it to make another version. That's cloning. Again,
11 you guys probably know this, and forgive me for repeating
12 it.

13 Now, the tax and regulatory update piece. The
14 tax rate goes up, our engineers would catch that change,
15 make a change to the version that we have on our site, and
16 ship it to the clients and install it on their version
17 running on their facilities.

18 If we have multiple clients with the exact same
19 release, the same rights, we would come up with one fix and
20 then apply it to other customers that had the exact same
21 rights. That's the cross-use, the reusing of updates that
22 you've heard about in this case.

23 Now, Ms. Blackmarr took the stand and answered
24 questions -- I'll get to her in a minute.

25 So basically we will take that update and reuse

1 it with other clients with the exact same rights.

2 Here she is.

3 "And you would test fixes in one customer's,
4 environment and then another customer would receive the
5 fix?

6 "ANSWER: If they were a binary equal, exactly
7 the same code."

8 "And it was common at Rimini Street to test
9 client fixes at one environment and then for the fix to be
10 sent to other clients?"

11 Her answer, "If they were binary equal, that
12 means the same release, and they were exactly the same."

13 That's when this reuse and these cloning
14 instances happened. If a client did not have the exact
15 same rights, they were not reused. They would be
16 independently updated one at a time for customized code.

17 Now, in a confusing case, perhaps no greater
18 confusion exists around anything other than this idea of
19 sharing software.

20 You've heard from witnesses on the stand that,
21 no, we don't share software, but then you hear a witness
22 say, yeah, we share software.

23 You see in a document where they say absolutely
24 we will never share your software to anyone else, and then
25 another document saying, hey, let's share this software.

1 How does that work? We tried to explain that,
2 some of these witnesses tried to explain that, and,
3 frankly, I'm not too sure I understood it myself.

4 But something happened to me Thursday that
5 helped me come up with maybe an example that might help you
6 all understand this.

7 Thursday, last Thursday, as I was getting ready
8 to go to trial, I pulled out my iPhone, and there is the
9 apple right there on the screen. And it wouldn't go away.
10 I tried to reset it, restart it. It's always there. My
11 phone had crashed in trial.

12 I can't call anyone, I can't get texts, e-mails,
13 nothing. A little stressful. It's already pretty
14 stressful, but that was pretty bad. Luckily, Erica, my
15 awesome assistant, took my phone to the Apple store to get
16 it fixed. All right.

17 So they fixed it all right, wiped it clean.
18 Everything on my phone, gone. And, frankly, I don't really
19 care about most of that stuff, but I had several thousand
20 pictures. I'm still not over that one, but they had to
21 wipe it totally clean.

22 When they wiped it clean, they brought it back
23 to basically the vanilla software that every iPhone that
24 you buy off the shelf has.

25 You go to the backroom at Apple, there's

1 probably a wall of these boxes with iPhones. At that point
2 my software was just like their software. They could
3 interchange software, I don't care, it doesn't matter to me
4 because they're exactly the same, they're vanilla.

5 Now, in order to restore my phone back to
6 somewhat close to my settings, they then had to download
7 the apps that I had on my phone. They would go to the
8 Apple store and download all these apps to repopulate my
9 phone with all the icons that I had.

10 At that point I still don't care because
11 everyone has access to those icons. Those apps are not
12 mine.

13 But the next step is where I start filling in my
14 personal information, my contacts, my personal
15 photographs -- I lost my photos, not yet at least, my
16 movies, my web history, all that stuff, my texts with my
17 wife. At this point I don't want people to know this. I
18 don't want people to know this. That's mine.

19 And really, as I was thinking, this really is a
20 pretty good example as to what happens with Rimini Street
21 and what happened with Mr. Baggett, if you recall.

22 Those vanilla environments that you load on the
23 software, they're all the same. No one really cares about
24 that. When you go to the website and put the patches and
25 fixes that are available for that code, still not that big

1 of a deal.

2 But as you heard Mr. Baggett say, once Bausch &
3 Lomb's proprietary, customized information was on that
4 software, then he considered it their software, and they
5 locked it down, and you better not share it.

6 When you think about vanilla versus customized,
7 I hope that helps you understand exactly why that's
8 significant.

9 And that's why when you hear we don't share
10 software, Mr. Baggett would tell you that's important
11 because if it's customized and it's yours, you better not
12 share it. And that's what happened in this case.

13 The evidence is that Rimini Street has not done
14 that. To the extent they were sharing and cross-using and
15 cloning, it was on the vanilla stuff. And I think the
16 record is pretty clear on that.

17 Automated downloading. I'm not going to bore
18 you with this. Again, before the maintenance end date,
19 when we're doing the apps downloading, we download these
20 files for the client before the maintenance end date.

21 And that process involves Rimini's basically
22 screening to make sure we get the files the client's
23 entitled to and not the ones they're not.

24 I asked Ms. Catz,

25 "Now, when a customer is on Oracle support,"

1 again, before the maintenance end date, "they're entitled
2 to access Oracle's website and to obtain fixes, updates,
3 and patches for their software, aren't they?

4 "ANSWER: Yes. That's what I shared earlier."

5 I asked, "It could be hundreds of files?"

6 "It can be.

7 "It could be thousands of files?"

8 "It absolutely can be."

9 The fact that we downloaded lots of files for
10 our clients is really irrelevant. The fact is, as long as
11 they had rights to do that, we're operating within the
12 scope of their license.

13 But you heard a lot about these servers and
14 about Oracle's servers and about us automated downloading
15 and freezing them out. I want to take a few minutes to
16 talk about that before I go on.

17 First of all, the Metalink terms of use, the
18 terms of use for this website that we access, says this,

19 "The materials may be shared with or accessed by
20 third parties who are your agents or contractors acting on
21 your behalf solely for your internal business operations
22 and you are responsible for their compliance."

23 Rimini Street was acting on behalf of its
24 clients when it accessed the files and downloaded them.

25 I'm going to refer to instructions a lot today,

1 and I don't want to bore you because it's really important
2 you understand that these are the rules of the road. You
3 have to apply these when you're making the very important
4 decisions in this case.

5 The California Computer Data Access and Fraud
6 Act, Section 2, requires that you download without
7 permission.

8 It says,

9 "If you find Rimini Street and/or Seth Ravin
10 believed it had authorization to access, and did not exceed
11 the authorized access, then you must find that they did not
12 violate this act."

13 If they had authorization and believed they had
14 authorization, they did not violate that law.

15 Here's another one. It's basically the same
16 language in this statute as well. If they believed they
17 had authorization, and they did not exceed their
18 authorization, you cannot find that they violated that
19 statute.

20 Here's another one, the Nevada Computer Crimes
21 Law. These are very long instructions. I'm trying to
22 focus you on those things that will help you make your
23 decision the best.

24 Again, without authorization. Rimini Street was
25 authorized by its client through contracts. Here's one

1 contract where it says,

2 "Client designates Rimini Street as an
3 authorized, designated Oracle support contact."

4 From Rimini Street's agreement with its clients,
5 "Client acknowledges that Rimini Street might
6 need to work with, configure, test, and possibly modify
7 PeopleSoft products licensed to client."

8 And "Client warrants that it has full legal
9 authority to enter into this agreement...and that no
10 third-party rights or permissions are required in order for
11 it to do so."

12 Rimini Street was authorized to make these
13 downloads both from the Metalink terms of use and its
14 contracts with its customers, and for all those state
15 causes of action that Mr. Isaacson talked to you about,
16 authorization is the key. Authorization is what you need
17 to look for when you're making your decision.
18 Authorization is the key.

19 Part of these statutes talked about an
20 intent to harm. These are really statutes dealing with
21 hacking, where people get into a computer to hurt it, to
22 steal something, or to break it. That's not at all what
23 Rimini Street does. As a matter of fact, that's the
24 opposite of what Rimini Street does.

25 They're trying to download material. They want

1 the servers to work.

2 And Mr. Ravin was asked,

3 "And in the event that your downloading would
4 have crashed the servers or harmed them, how could you have
5 finished your job?"

6 His answer: "Well, we couldn't have. There was
7 no benefit for us to crash a server we're trying to get
8 information from. So we took as many steps as we felt we
9 could to minimize, but we still -- these customers had a
10 right to the material."

11 What did you hear -- there it is. There's the
12 instruction on damages. They're entitled to damages for
13 the harm they suffered as a result of the violation, for
14 the harm they suffered.

15 And what did they suffer? Christian Hicks said
16 that the average download was increased by 2.4 seconds, and
17 that the total downtime was in excess of about 3 hours.
18 But in terms of physical harm to the servers, there was
19 none.

20 Let me be crystal clear about this. These
21 servers were not harmed, they were rebooted, basically
22 turned off and on and they started up running again
23 perfectly.

24 Oracle wants you to believe this delay was
25 somehow a major significant harm to them. But did you hear

1 testimony from a single customer who left because they
2 couldn't get their stuff quickly?

3 Did you have any evidence from anyone to
4 indicate that there was financial harm associated with a
5 delay or these servers being down?

6 And to be clear, the entire server farm was not
7 shut down by this activity, only one server for a period of
8 a short amount of time over one night.

9 David Renshaw, another gentleman for Oracle,
10 said, "No, there was no physical damage to the servers."

11 The fact is Oracle was not hurt from the
12 automated downloading. These servers that stopped and
13 stopped working for a period of time did not cause
14 financial harm. So what are we actually talking about
15 here?

16 We have told you that Rimini Street could have
17 operated from day one in a remote environment. Do you
18 remember in opening statement I drew this on the screen and
19 told you that the Court found that certain areas were
20 outside from the scope of the license, but from day one we
21 could have operated from within.

22 We still get to the same point, the same service
23 for the same price. We just now have to use some
24 inefficient means. All these steps were about efficiency,
25 being able to do things better, quicker, faster, with fewer

1 people.

2 The remote model means we've got to hire more
3 people. I understand there's a dispute about how many we'd
4 have to hire. We'll get to that in a minute. But the end
5 result is still achievable. And we did achieve it from day
6 one with our remote clients.

7 We just have to go over some additional hurdles.
8 We have to spend a little more time because we can no
9 longer use automated downloading tools.

10 We have to spend a little more time because we
11 no longer can local host if we have to start from the
12 beginning. And we could no longer cross-use, so from day
13 one we have to build each and every update.

14 This is really about forcing inefficiency. And
15 that's exactly what this is about. There is no harm to
16 Oracle, it just makes our job more difficult.

17 We still provide the same service with the same
18 price as with the local more efficient means.

19 Now, I want to shift gears and talk about their
20 interference claim. We've just now talked about the
21 copyright stuff, the copyright infringement claims.

22 I'm now talking about the interference claim
23 where they say that we misrepresented some facts to their
24 customers and the customers relied on our representations
25 to leave.

1 Here's another instruction. This instruction is
2 for induced breach of contract. This relates to the
3 website. This doesn't relate to customer interaction, it
4 relates to inducing our customers to breach their terms and
5 conditions of the website access.

6 Oracle has to prove for each such contract that
7 we intended to cause the customer to breach; that our
8 conduct was wanton, malicious, and unjustifiable; that we
9 caused the customer to breach and improper conduct was a
10 substantial factor in doing this.

11 The unjustifiable conduct at issue for this
12 claim has to be related to misrepresentations to the
13 client.

14 Now, this is important to understand. This
15 doesn't deal with copies, this doesn't deal with sharing
16 software, this deals with communications made by Rimini
17 Street to some customers that caused them to breach their
18 agreement with Oracle.

19 And here is where it gets really important.
20 Those statements must be made, Rimini must have made those
21 statements with the knowledge that they were false. And
22 then this. You have to have evidence that the third
23 parties relied on that statement.

24 Ladies and gentlemen, what have you heard in
25 this case about customers relying on anything told by

1 Rimini Street?

2 The only thing you heard was Mr. Baggett saying
3 they deliver on every promise they made.

4 This is another instance of failure of proof. I
5 told you in opening statement this case was going to be
6 about failure of proof, and this is another instance where
7 they simply cannot make their proof.

8 And, again, this only pertains to the website.
9 This is again not talking about customers themselves, it's
10 about telling these customers something that they relied on
11 and then they breached a contract.

12 There's no proof, no proof of that, ladies and
13 gentlemen.

14 Again, the clients authorized Rimini Street to
15 do this. They sign a contract with us and give us the
16 authority to download materials for them.

17 There's no evidence of any misrepresentation,
18 and there's no evidence of any reliance by any customer on
19 anything that we said that was wrong.

20 Okay. So that's the inducement to infringe.
21 Again, inducement to breach the contract.

22 Now, we're shifting gears and talking about the
23 intentional interference with prospective economic
24 advantage.

25 This is the one where they say we lied to

1 customers, and they say, okay, because of that I'm going to
2 leave Oracle.

3 This is the one where we allegedly lured folks
4 from the fat part of the pie away from them, and this time
5 they're saying we did it because we lied to them.

6 Here's what the law requires. In order to prove
7 that, they've got to say -- they've got to prove to you we
8 engaged in unlawful and improper conduct intended to
9 disrupt the relationship, the relationship was disrupted as
10 a result of that conduct, and the unlawful and improper
11 conduct was a substantial factor in causing Oracle harm.

12 And here again is the really important part of
13 that. I'm not going to talk about all the highlighted
14 yellow stuff, I'm going to focus on the stuff that's really
15 important, and it's toward the bottom here.

16 "And the third party must have relied in fact on
17 the statement."

18 Okay. There's no evidence that we actually told
19 customers anything knowingly false. You had Kevin Maddock
20 on the stand saying everything I told the customers I,
21 honest to God, believed was true. There's no evidence that
22 anyone knowingly said anything false to any customer. It's
23 not in the record.

24 But even if you thought there was something that
25 was shady and not right about anything that we told to any

1 customer, this is the nail in the coffin for this claim.
2 They have to prove that the third party relied in fact on
3 the statement.

4 I ask you, did you hear from any customer saying
5 they relied on a statement that was wrong from us? From
6 any customer at all?

7 The answer to that is no. Once again, a failure
8 of proof. They cannot possibly hit their burden of proof
9 here, ladies and gentlemen, they cannot because there is no
10 evidence.

11 Did anyone actually rely on any statement that
12 you heard in this trial? No. It just simply isn't there.

13 Here's where Mr. Yourdon hurt them again. Okay.
14 For this interference claim, let's keep in mind there has
15 to be an affirmative statement that we knew was false and
16 that customers relied on and, because of that, they left
17 Oracle. Okay?

18 Mr. Yourdon totally takes the legs out from that
19 case. Here's what Mr. Yourdon said.

20 "Now, Mr. Yourdon, in your opinion, it was
21 Rimini's promise of vendor-level support at a significantly
22 lower price than Oracle that caused customers not to renew
23 their support with Oracle; correct?"

24 His answer, "Yes, that's my opinion."

25 He didn't say, hey, listen, people were lied to

1 and they believed the lie and that's why they left.

2 He didn't say Rimini Street told these vast
3 misrepresentations to these clients and they relied on that
4 in making their decision not to renew with us.

5 That's not what he said. He said they left for
6 vendor-level support and a lower price. Oracle cannot
7 possibly get around that.

8 Conduct is not a substantial factor in causing
9 harm if the same harm would have occurred without the
10 conduct.

11 As I've told you, these folks were on their way
12 out of the door.

13 Now, let me stop here real quick. We're not
14 going to contend in this trial, and I don't think we ever
15 have contended, that every Oracle customer hates them.
16 They probably have customers that are very happy. They
17 probably have customers that feel they're getting great
18 value.

19 But, frankly, those aren't our customers. Those
20 aren't the folks who come with us. These are the folks who
21 come with us. They are not happy, they're not getting
22 responsive service; and, as Brian Baggett told you, they
23 aren't getting value.

24 Once again, Mr. Yourdon says our customers are
25 coming out of this 5 percent. That's an admission by their

1 own paid expert.

2 Here's another thing. You heard about this from
3 the judge. This competition angle when it comes to
4 intentional interference.

5 It says if the purpose of these communications
6 was at least in part to advance its interest in competing,
7 that's something you have to take into account.

8 First of all, we don't get there because there
9 was no affirmative misrepresentation, there's no reliance
10 on it, and there's no proof these folks weren't leaving
11 anyhow. But that's an important part of the instruction.

12 And so long as Rimini Street and Seth Ravin's
13 motivation was at least partially to compete, that's
14 something you have to take into consideration as well.

15 And I encourage you -- I'm highlighting the
16 parts I think are most important to try to help you along
17 the path here. But you have to read these instructions
18 unfortunately all the way through. Each word is as
19 important as the other. You can't ignore any part of
20 these. You have to look at all of the instructions.

21 Mr. Maddock testified that -- that,

22 "QUESTION: I didn't ask you about -- have you
23 ever said to customers that Rimini is abiding by or
24 following the Oracle license agreements?

25 "Yeah, I would have repeated our standard

1 messaging saying that 'we have methodologies in place to
2 ensure that you don't receive anything outside your
3 agreements.'

4 "And how many times do you think you've said
5 that to customers?

6 "Probably fewer than 10."

7 And by my math 10 is a lot fewer than 229.

8 And he goes on talking about where an opinion
9 was given, and he says, "less than 10 times."

10 And then talking about whether a customer had
11 actually questioned the legality of Rimini's business, and
12 he said for him probably fewer than five times.

13 And, finally, if they did ask a question, he
14 said, "My typical response would be that they should go
15 back to their legal team to review the contract and make
16 their own determination."

17 And, again, I told you this earlier but this
18 bears repeating. When asked if he had ever made any -- let
19 me just ask the question.

20 "Do you believe that the statements you made to
21 clients between the time you joined the company to December
22 of 2011 were accurate when you made them?

23 "Yes, I absolutely do."

24 Brian Baggett, asked him,

25 "During the negotiations with Rimini Street, did

1 you at any time feel that Rimini Street was misleading you?

2 "No. They were very open and forthcoming about
3 what they could do and what they couldn't.

4 "QUESTION: Over the course of the relationship
5 between Bausch & Lomb and Rimini, did they ever fail to
6 deliver on any promise?"

7 His answer, "No, they did exactly what they said
8 they were going to do."

9 I want to talk about Mr. Baggett just real
10 quickly. First of all, Oracle's lawyer made a point about
11 how we had not disclosed to Mr. Baggett what had gone on in
12 this trial.

13 But if you recall, when that question came up, I
14 objected, and I asked the judge to remind counsel that we
15 were under an obligation not to talk to these folks about
16 what was going on in trial. And that's been on both sides.
17 We can't talk to these clients, these fact witnesses about
18 what's going on in this trial.

19 But I do want to talk about Mr. Baggett. He has
20 no dog in this fight. I mean, he does not have a stake in
21 the outcome. He's got his own day-to-day job, 9:00-to-5:00
22 job in Rochester, New York.

23 We asked him to come and testify. We couldn't
24 force him. We couldn't subpoena him to testify. We just
25 said, "It would be really helpful if you could come and

1 testify in front of a jury across the country." That's a
2 pretty big ask of anyone.

3 He no longer uses our services. He's no longer
4 our customer. We asked him to fly across the country to
5 take that stand and go through cross-examination to testify
6 in front of a bunch of strangers about something he was no
7 longer even involved with, and he did it. He did it.

8 And you heard his testimony. And it became very
9 clear from what he was saying that he genuinely believes in
10 what we do, and he appreciated the service that he got from
11 us.

12 Mr. Baggett and these customers are highly
13 important witnesses because every witness that we put up on
14 that stand, they want us to win. Our experts, our fact
15 witnesses, they want us to win. Every witness that Oracle
16 put on that stand desperately want them to win.

17 But these customers, Mr. Baggett, they got
18 nothing to gain. They just want to tell you the truth
19 under oath.

20 Losses and profits that are mere guesses,
21 speculative, remote, or uncertain should not be considered.
22 And that's really important.

23 When you talk about actual harm caused to Oracle
24 from the processes used by Rimini Street, speculation isn't
25 enough. They're has to be proof, real proof.

1 Which brings us to our third essential truth.
2 There's no evidence that any Rimini client would have
3 stayed and paid.

4 And this gets back to our most important
5 instruction. Again, looking at this instruction, this
6 means that if a client left Oracle International
7 Corporation for reasons unrelated to Rimini Street's
8 infringement, there is no causal relationship and therefore
9 no lost profits damages.

10 If these customers are leaving Oracle for
11 reasons unrelated to our infringement, there are no lost
12 profits damages.

13 Oracle has to prove that our infringement caused
14 damages. And, again, here is that important instruction.
15 It's Instruction Number 30. It appears on page 38 of your
16 jury instructions.

17 Mr. Yourdon says he thinks that these customers
18 were thinking that they were going to go back to Oracle if
19 Rimini Street wasn't an option.

20 He says, "In my opinion, what they generally
21 would have done is renewed their support at the same kind
22 of historical renewal levels that Oracle had already been
23 enjoying."

24 Again, you cannot base any award in this case,
25 lost profits award, based upon speculation, guesswork, or

1 conjecture.

2 And, once again, if you apply that instruction
3 to Mr. Yourdon's testimony, you cannot rely on his
4 testimony, because that's all it is. He's telling you what
5 our customers probably thought.

6 What is the best source to figure this out? Is
7 it an expert witness, or is it the customer?

8 Again, these customers were asked these
9 back-to-the-future type of hypothetical about what they
10 would have done if they would have known.

11 Mr. Baggett again was asked that question. He
12 says that if Rimini Street was infringing, he would not
13 have gone with them. But he also was emphatic, he
14 definitely would not have gone back to Oracle.

15 Mr. Baggett does not meet this definition. But
16 he's not alone. Again, every one of these customers were
17 asked by Oracle "If Rimini was infringing, you wouldn't
18 have gone with them, would you?" They said "no."

19 But they didn't ask them the right question,
20 that "If Rimini Street was not an option, would you have
21 stayed with Oracle, gone back to Oracle?" They didn't ask
22 them that one because they knew the answer.

23 Here's Clark Strong. He was one of the first
24 depositions that we played. He was asked by Oracle's
25 lawyer -- again, let me set the stage for you again.

1 Oracle selected these 17 customers. They took
2 this guy's deposition, and they asked him,

3 "To what extent was the lower price a factor in
4 the decision for Birdville to contract with Rimini Street
5 rather than to renew with Oracle?"

6 His answer: "None."

7 Right there Mr. Yourdon's opinion is out the
8 window because he says price wasn't a factor at all.

9 Oracle's lawyer couldn't believe him. He said,
10 "The price was no -- no effect whatsoever?"

11 His answer, "No."

12 Third try,

13 "So if they would have been the same price, you
14 still would have contracted with Rimini Street?"

15 His answer, "That's what I would have
16 recommended."

17 He goes on to say what -- this goes to the other
18 options that he would have considered.

19 "If Rimini Street couldn't or said it couldn't
20 provide tax and regulatory updates at the same quality as
21 Oracle, would Birdville still have contracted with Rimini
22 Street for support?

23 "I'm not sure. I think I would have recommended
24 to my supervisor that we go forward with it.

25 "Then what would you have done with your tax and

1 regulatory updates?

2 "Would have done them ourselves like we did it
3 in the past."

4 Here's another one of those hybrid situations
5 that you didn't hear about this case. They would have
6 self-supported what they'd done or could do and then farm
7 out to someone else to do the tax and regulatory updates.

8 "And as we sit here today, does Birdville have
9 any plans to go back to Oracle for support?

10 "I would not recommend it.

11 "Why not?

12 "Because of the support we get from Rimini
13 Street."

14 Cort Swanson, another one of these depositions
15 that you saw from customers.

16 "QUESTION: If Rimini Street had not existed,
17 would AGCO still be on Oracle's support for JD Edwards?

18 "ANSWER: One of the things we were also
19 considering is completely dropping Oracle for JD Edwards.

20 "And what would AGCO have done in that
21 circumstance?

22 "We would have supported the applications
23 ourselves."

24 So they were already considering leaving Oracle
25 before we even came into the picture. And they would have

1 just self-supported if that happened.

2 Oracles's lawyer asked,

3 "When you said AGCO was considering
4 self-support, did AGCO consider the efforts required to
5 monitor new litigation?"

6 His answer, "Yes."

7 "Did AGCO have an estimate about what it would
8 cost AGCO?"

9 "In North America, we looked at how we would
10 support our regulatory changes, yes."

11 And he talked about quality service, and he
12 says,

13 "We have found that the -- for the issue support
14 that we receive, Rimini Street is much superior. We have a
15 named software engineer who contacts us within 30 minutes
16 of any problems."

17 Graham Carter, SonicWall, was asked,

18 "When SonicWall was deciding to go Rimini, had
19 SonicWall already made the decision that it was going to
20 migrate off Siebel?"

21 "Absolutely, yes."

22 If you apply that instruction, ladies and
23 gentlemen, he too cannot be a lost profits customer.

24 Rhonda Minks, Brazoria County. She's the one we
25 talked about earlier with respect to the no-brainer

1 hypothetical. They were talking about,

2 "So if Oracle cost this much, and Rimini cost
3 the exact same amount, would you have switched?"

4 Her answer was, "Back then Gene," her
5 supervisor, "was really upset because we were having to
6 repurchase a product that we already purchased. His being
7 upset is what caused us to even go look for third-party
8 support."

9 Rimini's infringement didn't cause them to
10 leave. Her boss being upset caused them to leave.

11 "And would Brazoria County have served as a
12 reference for Rimini Street if it wasn't getting quality
13 service?

14 "No. We were tickled pink with our services.
15 Steve Woodward, Pitney Bowes.

16 "How important a factor was the cost?"

17 The very bottom of that. He says, "It was
18 probably a secondary factor to the primary reason that the
19 committee was already aware of.

20 "Okay. What was that reason?

21 "The primary reason was that we had made the
22 decision to move away from Siebel support."

23 The causal link is not here either. They had
24 already decided to move.

25 "QUESTION: And so you had made the decision,

1 Pitney Bowes made the decision to move away from using
2 Siebel as a product?"

3 His answer, "Correct."

4 Rimini's infringement did not cause this
5 customer to leave.

6 One year earlier, approximately, they had
7 already made the decision to move off of JD Edwards. And
8 in the interim, he had provided self-support.

9 And then there's Mr. Baggett. Mr. Baggett took
10 the stand and testified in this court and answered
11 questions from me and from Oracle's lawyer. He said
12 emphatically he would not have gone back to Oracle if
13 Rimini Street was not an option.

14 He talked about how they are not getting value.
15 They paid 2.2 million a year, and they weren't getting the
16 value they needed. They had to hire additional people
17 internally to fix problems that Oracle's folks would not
18 fix.

19 I asked him the question -- and I phrased it as
20 an important question because I wanted you all to hear
21 this. I asked him, "If you were getting excellent service
22 from Oracle for that 2.2 million, would you have decided to
23 go off of Oracle for support?"

24 His answer, "No, we would have stayed with
25 Oracle."

1 If Oracle was giving him the support that he
2 needed and wanted, they would never have left. Once again,
3 the causal link is not there.

4 Now, I want to point out something to you about
5 Bausch & Lomb. Bausch & Lomb was paying Oracle 2.2 million
6 every year. When they came to us, they got the same
7 service or better service for \$315,000 per year. And
8 Mr. Baggett testified in this court that he received far
9 superior service and responsiveness and much better value.

10 "And during these negotiations did you at any
11 time feel that Rimini Street was misleading you?"

12 His answer, "No, they were very open and
13 forthcoming, and they did exactly what they said they would
14 do."

15 I mentioned this earlier, but I want you to see
16 this exactly in the transcript where Mr. Baggett said this.
17 In talking about what they would have done in the absence
18 of remote or local.

19 He said that, "We were going to support part of
20 the application ourselves, and then, for the HR piece, we
21 were either going to replace it with another piece of
22 software, or we were just going outsource it to some
23 company like ADP."

24 And then I asked him these questions again
25 regarding this important instruction about the infringement

1 causing lost profits.

2 I asked, "Mr. Baggett, if you would have known
3 that Rimini Street would have those vanilla environments on
4 their servers, would you have gone back to Oracle for
5 support?

6 "No.

7 "If you had known that Rimini Street would on
8 occasion use one of those vanilla environments and clone it
9 for another client with the same license rights, would you
10 have gone back to Oracle for support?

11 "As long as it was licensed, no, it's not an
12 issue.

13 "And the same question with updates. If you had
14 known that, would you have gone back to Oracle?"

15 His answer, "No."

16 Now, I sat down after asking Mr. Baggett my
17 questions, and he told you a very compelling story. He
18 went into specifics about his experience with Oracle
19 support, and, frankly, it was not a good one.

20 He talked about unresponsiveness, hostile
21 negotiations, aggressiveness. You heard all that directly
22 from him.

23 When he left he told you that he was told that
24 he would regret that decision. Talked about years of going
25 back and forth trying to resolve this problem, and,

1 finally, when all hope was lost, he decided to leave Oracle
2 entirely. You heard all that.

3 Oracle's lawyer then got up and asked her
4 questions. One of her first questions was, "Does your
5 employer know you're here?" And he said "No."

6 And then she said this.

7 "Okay. So I will say to you that -- so I'm a
8 representative of Oracle, and I know that Oracle takes very
9 seriously the loss of every customer, so I'm sure that they
10 were disappointed to hear about your personal experience.
11 Do you remember who your contact was at Oracle?"

12 His answer, "I don't. We had several.

13 "Okay. Because I'm sure they would want to
14 follow up even though it was a long time ago. So if you
15 remember, feel free at any time to let us know."

16 I'm speechless. I have nothing to say to that.

17 The fact is 5 percent of their customers leave
18 every year. Every year 5 percent of their customers leave,
19 and they go someplace, and they have to establish that our
20 customers came to us because of our infringement, and they
21 suffered lost profits damages because of our infringement.

22 Again, as I told you earlier, if they were
23 right, and our customers are coming out of the fat piece of
24 the pie, their attrition numbers would increase over time.

25 What really happens is they decrease. They

1 decrease over time, especially with our very largest
2 product, PeopleSoft, has been cut in half over these --
3 over the relevant timeframe in this case.

4 And Mr. Yourdon agrees with us, that our 5
5 percent -- our customers are coming from that 5 percent in
6 the real world.

7 So why do customers come to us? There's a
8 common thread with these customers. They love our service,
9 and they -- and, frankly, we give them good value. But
10 when you hear these customers, they don't talk about how
11 cheap we are, they talk about how great our service is.

12 And I told you during this trial in opening
13 statements that our secret sauce is our service. It is at
14 the center of everything we do.

15 And you can listen to lawyers talking about lies
16 and about how our business is corrupt, or you can listen to
17 the customers who don't have a dog in this fight, and they
18 told you exactly under oath what drives them to us.

19 The fact is we are different than the vendor,
20 and we give better value to our customers, and our customer
21 satisfaction average that you all probably wanted to know
22 about earlier and it finally came out, 4.8 out of 5.

23 Causation. This critical link between
24 infringement and lost profits simply is not in this case,
25 and Oracle has failed to meet its burden to show it.

1 Have they shown that our customers left because
2 of Rimini? No.

3 The evidence that you've seen in this case is
4 they leave because of high cost, poor service, and forced
5 upgrades.

6 Have they shown you that these customers chose
7 Rimini because of the process we used? No. We chose --
8 they chose Rimini because of better service, referrals,
9 lower cost, updates, better treatment.

10 And, finally, have they shown that but for
11 Rimini these customers would have stayed and paid Oracle?
12 No, they would have self-supported, gone to another
13 third-party option, gone to a new software, or done a
14 hybrid approach, like so many of these customers said they
15 would do.

16 For all these reasons the causation chain is
17 broken. They cannot match the infringement with the money,
18 they cannot get lost profits.

19 So when you look at their claim for damages, I
20 want you to remember the very important causation
21 instruction. I want you to remember the failure of Oracle
22 to offer you any evidence of actual causation.

23 So what is left? I told you in opening, you
24 heard during trial, we're not here to hide from our
25 liability. We're not here to shirk our responsibility.

1 The Court found that we infringed, and we are
2 here to answer those claims and answer to you for that
3 infringement.

4 We are here to make things right, and we look to
5 you to tell us exactly what that looks like. But your
6 decision has to be based on evidence, not conjecture, not
7 guesswork. That's all we ask.

8 Value of use damages. This is what Scott
9 Hampton talked about. And there's been some dispute, you
10 heard already from Mr. Isaacson, he had a very long
11 discussion about his critiques of Mr. Hampton's approach.

12 Let me see if I can explain to you how this all
13 works.

14 My dad is a phenomenal negotiator. When I was a
15 kid, he was just awesome. Everything he went to buy, he
16 negotiated, and he could get fantastic deals, from a car to
17 something as silly as a lawnmower.

18 And in learning from him, he said, "Listen, you
19 got to always have in your hip pocket your walk-away
20 number. You have to have in your pocket, before you even
21 start the negotiation, that once it gets to that number,
22 you're out. There's no second guessing, there's no going
23 back and rethinking it. It's your walk-away number."

24 Mr. Hampton offered to you what Rimini Street's
25 walk-away number would have been in this case. The Court

1 says that the fair market value of the license is the
2 amount a willing buyer would have been reasonably required
3 to pay a willing seller at the time the infringement began
4 for the actual use made by Rimini Street.

5 So this is what's called a hypothetical
6 negotiation. Obviously, it didn't really happen.

7 But imagine yourself, Oracle and Rimini Street
8 across the table, and they're trying to come up with a
9 number to compensate Oracle for Rimini's use of the
10 copyrighted material, the material as used by Rimini
11 Street.

12 I never talked this long in my life.

13 So, anyhow, so they're across the table doing
14 the negotiation.

15 What Mr. Hampton tried to do is figure out what
16 would Rimini Street's walk-away number be? And so he said,
17 okay, so what would they have to do to avoid a license
18 entirely, avoid Oracle's negotiation entirely and the
19 remote model?

20 They could go to a remote model entirely and not
21 have to deal with these negotiations, they'd just do their
22 own thing.

23 But there's a cost to it. He said there is
24 about a \$9.3 million cost for them to actually go to this
25 remote model. They knew that to go away from this license,

1 they would have to spend more money.

2 And so what he did was he came up with the
3 walk-away number for you, that number at which Rimini
4 Street said we don't need the license, we'll just go to
5 remote, it's cheaper.

6 If Oracle demanded \$9.4 million, we say no
7 thanks, we'll just go remote. If it was 9.2, it made more
8 money sense to go with Oracle.

9 So that's how this all worked. This
10 hypothetical negotiation is this kind of hocus-pocus kind
11 of thing. He tried to put reality, concrete numbers into
12 place, as to what exactly that would look like. And the
13 value of use is the amount of money that they saved by
14 going through the license route.

15 Now, Mr. Hampton said, after talking to
16 Mr. Benge, he said you would get twice as many people to do
17 this, you've got to pay more people to download stuff and
18 to work a lot of these programs.

19 That could be three times, it could be something
20 else. But Mr. Hampton tried to come up with a number that
21 best approximated what the walk-away number really would
22 be, and that's what you saw in this trial.

23 But what you also saw was this. Oracle does not
24 have any response to a walk-away number. No witness took
25 the stand and said actually the walk-away number would be

1 this. It doesn't exist.

2 Randy Davis said this,

3 "And, likewise, you have not offered an opinion
4 in this case regarding the amount of money that Rimini may
5 or may not have saved through the copying at issue;
6 correct?

7 "Correct, I have not."

8 Now, you just heard from Oracle's lawyer about a
9 number from Ms. Dean that apparently is this fair market
10 value number. You didn't hear anything about that in this
11 trial, and, frankly, neither did we. It's some number in
12 excess of \$112 million.

13 For a hypothetical negotiation to work, Rimini
14 Street would be willing to agree? You have to answer that
15 question yourself.

16 So here's what you're left with. Fair market
17 value. Rimini Street said the walk-away number, the number
18 at which they would decide just to go remote is
19 \$9.3 million. And you saw no evidence from Oracle, which
20 brings us to Rimini's profits.

21 Now, you heard evidence in this case that the
22 only way Rimini Street could have charged 50 percent less
23 than Oracle is because we infringed. But that's not
24 exactly what the evidence showed you in this trial.

25 The fact is Oracle makes a lot of money on

1 maintenance. I asked Ms. Catz,

2 "And it's true, isn't it, that the maintenance
3 revenues account for nearly half of the revenue of the
4 company?

5 "Yes.

6 "And without this money, Oracle really couldn't
7 do anything?

8 "Yeah, it's critical to us."

9 And then I read her an excerpt from an analyst's
10 report saying n-- quoting her as saying,

11 "Maintenance continues to be a 'very profitable
12 part of our business, and as the number gets bigger and
13 bigger, it's really impossible for us to actually spend our
14 way through it, and so in general that's the sort of
15 overriding thing that guides our margins.'"

16 "Ms. Catz, do you remember saying that?

17 "ANSWER: Yes."

18 Again, to show a recovery of profits, they have
19 to establish a causal relationship again, causation again,
20 between the infringements and the profits generated by
21 Rimini Street. That's their burden to prove that.

22 The way that Rimini Street offers its pricing
23 the way it does, is that there's so much profit already
24 built into the model, they can take half of that and still
25 have a viable business, and that's what you heard from the

1 witnesses in this trial.

2 Rimini actually chose to take less profit
3 because that's still enough to run a business.

4 Despite that, Rimini Street has been running at
5 a significant loss. Mr. Zorn took the stand and told you
6 how they've been losing money over money over money. Now,
7 eventually, they hope to change that. But over the course
8 of the relevant timeframe in this case, they have lost a
9 lot of money.

10 But you also heard how they've been investing
11 growth, expansion, trying to grow and expand product lines
12 into new areas.

13 And so what Mr. Hampton did is he said, okay,
14 this is what actually they experienced, this is what
15 actually Rimini experienced.

16 According to Generally Accepted Accounting
17 Principles and regular audits, they've lost a lot of money
18 over the course of time.

19 But what Mr. Hampton did is he took away the
20 growth money they spend, all the investment they're
21 spending to expand their business, and looked purely on
22 what they spend on running the business on these products.

23 Let's take away the artificial appearance that
24 we're overspending to grow. He looked simply at what is
25 the profit for doing this business? And he came up with

1 \$14.1 million as Rimini's profits attributable to getting
2 this service for these clients on these products.

3 All the growth stuff and expansion is out of the
4 picture. When you take that out of the picture, we show a
5 profit.

6 Now, the reality is we still lose money, but
7 we're not here to try to hide anything. If you just look
8 at servicing these products, there is a profit.

9 Now, it was said earlier during closing that
10 we're just telling you the number that we want to pay. I
11 can assure you we don't want to pay \$14 million. We don't.
12 That's real money.

13 What we're trying to do is give you some
14 evidence that you can use to determine what is fair
15 compensation for actually what we did. And this is what we
16 tried to do here.

17 Database damages. I'll go through this fairly
18 quick. But basically Oracle has told you a pricing
19 strategy that is different than what they actually use in
20 the real word.

21 Mr. Allison was asked,

22 "Does Oracle have a standard pricing for a
23 license for Oracle Database?

24 "ANSWER: We do.

25 "Is server information relevant to pricing for

1 database?

2 "It is. The pricing's based on the size of the
3 server."

4 You also saw documents in connection with
5 Dr. Hilliard's testimony about how Oracle recommends
6 copying of the database for its customers and about how one
7 database can service multiple servers, and how there are
8 other databases available to Rimini Street in the
9 marketplace other than simply the Oracle Database.

10 And then you heard Mr. Allison say that he's not
11 even for sure if he would actually license Rimini even
12 under the strategy that they advanced in this case.

13 Dr. Hilliard looked at -- okay, so if you
14 actually look at how we would actually use the database,
15 what we would actually need to license to run our best, he
16 said we need probably two database licenses, and that would
17 total about \$90,000.

18 But even if you expanded to all 72 clients that
19 Oracle alleges that we did, it only comes up to roughly
20 \$3 million.

21 As you can see, damages in copyright cases can
22 get a little gnarly, a little hard to put your arms around,
23 and that's why Congress looked at this and offered a new
24 approach, a statutory damages approach, where you are to
25 look at certain things to come up with a number for damages

1 in lieu of your ability to come with some sort of precise
2 number from what you've heard in this case.

3 To do that -- again, the purpose of statutory
4 damages is to penalize the infringer and deter future
5 violations of copyright law.

6 The willful infringement determination that you
7 make in this case doesn't relate to copyright infringement,
8 per se, it relates to statutory damages, and that's
9 important to understand.

10 The amount that you may award in statutory
11 damages is not less than 750 and not more than \$30,000 for
12 each work that you conclude was infringed.

13 Now, I'm not going to tell you what number you
14 should pick. That's up for you to decide. Something
15 between 750 and 30,000 is probably about right.

16 Oracle says you can go all the way to \$150,000,
17 the ceiling for willful infringement, but that's your call,
18 not mine.

19 To show willful infringement, you have to show
20 that defendant knew that its acts infringed the copyright.
21 And you heard testimony in this case that Rimini Street
22 felt, it believed in good faith that what it was doing was
23 right.

24 Eventually it was determined to be wrong, but
25 that doesn't mean at the time it believed it was

1 infringing.

2 How many works do you multiply this by? Some of
3 you may be thinking it's the number of copies involved,
4 that you've heard all this testimony about tens and
5 thousands and hundreds of thousands of copies, so you must
6 multiply those by the number.

7 That's not it. That's not it at all. It's the
8 number of works that you find were infringed.

9 And in this case, their own expert says, yes, I
10 determined that there were 62 different Oracle copyright
11 registrations that were on Rimini's systems, 62.

12 So you take 62 and multiply that by the number
13 that you've determined for your own self is appropriate for
14 the infringement in this case, and that's how we arrive at
15 statutory damages.

16 Now, as you see in the instructions, you have to
17 do this separate and apart from analyzing the actual
18 damages, if any, in this case.

19 So you don't add them together, but you have to
20 make this decision. It's an important one. We want you to
21 take your time and think about it.

22 But this is how it would look like. If it's 750
23 times 62, it's \$46,000. If it's 30,000 times 62, it's
24 about 1.8 million. But you all get to decide what the
25 numbers should be.

1 Ultimately when you look at this, when you
2 actually look through the damages case and actually start
3 examining how their damages case fits into the law, you see
4 that there is no lost profits damages, they cannot prove
5 causation.

6 There's no lost profit for interference because
7 they cannot prove causation.

8 They have no opinion on fair market value, no
9 proof of knowingly false statements to clients, and
10 certainly no proof of anyone relying on them, and there's
11 no proof of any harm to the servers.

12 And once you actually look at their damages
13 case, you see that it collapses on its own weight.

14 When you look at the damage case, this is what I
15 would submit to you should guide you, and this is just our
16 evidence in the case.

17 No lost profits because no causation.

18 You look at the database, it's anywhere from a
19 hundred thousand to 3 million, and then you decide with
20 respect to fair market value, the 9.3 walk-away number, or
21 the \$14 million number that Mr. Hampton said was the
22 profits once you extract the growth money spent by Rimini
23 Street.

24 Before I leave, I want to talk about Mr. Ravin,
25 my client. As you heard on the stand, this was -- this

1 company was his baby.

2 He started Rimini Street to provide a service
3 model that focused on the customer rather than the vendor.
4 He did this because he knew that there was a need in the
5 marketplace for outstanding service at a decent value.

6 And he is a personally-named defendant in this
7 case. He's personally on the line.

8 For Oracle to prove that he is responsible, and
9 he should be hit with a number in this case, they've got to
10 show a couple things, contributory infringement and
11 vicarious liability.

12 And there are instructions in your book. The
13 contributory infringement instruction is number 26, and I
14 will tell you that that's an important one.

15 In order to find that Mr. Ravin is personally
16 liable for this stuff, you have to show that he knew or had
17 reason to know of Rimini Street's infringing activity.

18 Mr. Ravin told you on the stand that he believed
19 that what they were doing was fine. The fact that he is
20 wrong does not show that he is contributorily liable and
21 vicarious liability.

22 You have to show -- they have to show you and
23 you have to find that he failed to exercise his right to
24 control this company and that, as a consequence, they
25 infringed. The evidence simply isn't there for this,

1 ladies and gentlemen. Mr. Ravin has not been found and
2 should not be found to be personally liable.

3 Which brings me to punitive damages. So we
4 talked now about compensatory damages. What is the amount
5 of money proved by the evidence by real proof that supports
6 a number for you to give in this case to compensate Oracle
7 for the infringement of my client?

8 Now we're talking about something entirely
9 different. This is called punitive damages.

10 First of all, punitive damages is not -- they're
11 not available for copyright infringement. What that means
12 is all the evidence you heard about copying and sharing
13 software and libraries and all that stuff has nothing to do
14 with punitive damages.

15 So when you're thinking punitive damages as to
16 whether they're recoverable or not, all the stuff you heard
17 about copyright infringement is not in play, and it says so
18 right in instruction 56 from the judge.

19 In order for Oracle to prove that they are
20 entitled to punitive damages, they have to show you by
21 clear and convincing evidence that the wrongful conduct
22 upon which you base your finding was engaged in with fraud,
23 oppression, or malice on the part of my client.

24 Now, you can't really grasp the significance of
25 this until you go farther down into this instruction, and

1 this is one I think you really need to look at hard.

2 First of all, clear and convincing evidence. We
3 talked earlier about that thermometer just going to 50,
4 just over 50 to 51. Clear and convincing evidence is
5 different. It's higher than that.

6 You must be persuaded by the evidence that the
7 claim is highly probable. It has to be clear and
8 convincing that punitive damages are warranted.

9 Fraud means misrepresentation, deception,
10 concealment of material fact, with an intent to deprive
11 Oracle of rights or property or otherwise injure Oracle.

12 That's what fraud means under the statute -- or
13 under the instruction.

14 Oppression. Despicable conduct that subjects
15 Oracle to cruel and unusual hardship. Did Rimini Street
16 engage in that kind of conduct?

17 Malice. Intended to injure Oracle, or
18 despicable conduct which is engaged in with a conscious
19 disregard to the rights or safety of Oracle.

20 Is that the type of conduct you saw in this
21 trial?

22 Despicable conduct. So vile, base, or
23 contemptible that it would be looked down upon and despised
24 by ordinary, decent people.

25 I will submit to you, ladies and gentlemen, my

1 client's conduct falls far short of anything that would be
2 subject to punitive damages.

3 Punitive damages can only be found if you first
4 find some violation of an underlying cause of action. And
5 what that means is you don't get to punitive damages until
6 they first prove that they win on these claims.

7 These are the only claims for which punitive
8 damages are sought, the computer fraud case in California,
9 the Nevada computer fraud statute, and intentional
10 interference.

11 Do you remember with the computer fraud it
12 requires lack of authorization. And we've shown you that
13 there was authorization through our clients and our
14 contract with our clients.

15 So for those statutes they simply don't get to
16 punitives because they can't prove they win on the
17 underlying claim.

18 And intentional interference. That's the one
19 where they have to show some statement was made that was
20 false, and known to be false, and someone relied on it in
21 fact. No proof whatsoever to support that.

22 You don't get to the question of punitive damage
23 unless you first find that my client has violated one of
24 those statutes, and there is no evidence to support that.

25 And Mr. Maddock said every single one of his

1 statements he believed to be true and accurate when he made
2 them. And the number of times he actually made statements
3 about legality of their operations was fewer than 10 times.
4 And Oracle didn't prove to you any customer to whom he made
5 those statements, and no reliance by any of those
6 customers.

7 One of the things that you can look at in
8 deciding punitive damages. Let's assume just for the sake
9 of argument that you decide that my client has, in fact,
10 violated either the California or Nevada Computer Fraud
11 Act, or you find that there was a statement that some
12 client relied on.

13 If you start actually considering whether
14 punitive damages are recoverable, and I would submit to you
15 that they are not, but if you do, one of the things that
16 you're instructed by the judge to look at is instruction
17 58.

18 It says, "Even if you find that punitive damages
19 might be available, if you decided that Rimini Street or
20 Mr. Ravin acted on an objectively reasonable belief that
21 their conduct was not unlawful, such as the interpretation
22 of the licenses allowed through the period of 2006 through
23 2011, then you must not award any punitive damages."

24 What that means is this. If you actually get to
25 the point where you found the violations of those statutes

1 and you're questioning do we award punitive damages, one of
2 the things you can look at is did they have a good faith
3 belief, an objectively reasonable belief, that the
4 contracts allowed for them to do this.

5 Mr. Allison took the stand and told you that
6 these agreements were perfectly clear, and to him they
7 probably are. He works with this on a daily basis, and
8 he's a very impressive man and he was a very impressive
9 witness, and I believed it when I heard it too.

10 But then I started looking at it and looking at
11 the facts surrounding it, and here's some things that I
12 want you all to think about in determining whether or not
13 Rimini Street had an objectively reasonable approach for
14 these contracts.

15 First of all, they're all confidential.
16 Mr. Ravin saw a bunch of these contracts when he was at
17 PeopleSoft, but thereafter they're confidential.

18 Facilities, not defined.

19 Site with a capital S, defined.

20 Site with a small S, not defined.

21 Territory with a capital T, defined.

22 Copies, allowed.

23 Some copies not allowed.

24 Reasonable number of copies, not defined.

25 These all relate to some of the key terms in

1 this case. Objectively speaking, it may not be as clear as
2 Mr. Allison told you.

3 Here's what else. You saw some of these in the
4 case. We had customers inquiring about why don't we do
5 certain things that have been found in this case not to be
6 appropriate; for example, "Maybe I'm mistaken, however,
7 wouldn't Rimini Street create a tax update that can be
8 shared by other customers who have vanilla instances?"

9 A client is asking us "Why don't you just
10 cross-use?"

11 Another client raised concerns about our intent
12 to set up an in-house environment using their software
13 because they were unclear as to why we couldn't simply
14 develop using other environments that we had for other
15 clients. Another one of our customers suggesting that we
16 do cross-use.

17 And, finally, a lot of sophisticated customers
18 have chosen us and requested local hosting. And that's not
19 to say that this is right because Your Honor has found it
20 to be wrong.

21 But it just shows you that maybe it's not as
22 clear as Mr. Allison said, and maybe my clients did in fact
23 have an objectively reasonable basis to think that what
24 they're doing was okay.

25 Now, early on in our company there were

1 certainly some missteps. And if you were to ask some of
2 our folks if they could do it over again, if they would do
3 it a different way, I'm pretty confident you would get the
4 answer yes.

5 But we are where we are. We've advanced to the
6 point now where we are ISO certified and our processes are
7 much more mature. But that does not and will not and
8 cannot take away the fact that we violated these contracts.

9 The Court found that we exceeded the scope of
10 this license, and we are here to be held accountable for
11 it.

12 Now, to do that, I'm going to walk through for
13 you the verdict form, and this likely will be the most
14 exciting part of my presentation. I am joking.

15 All right. So you each get one of these. Or I
16 think you just get one of these. And this gives you the
17 questions you have to answer by looking at some of these
18 very important instructions, the user manual.

19 You follow the user manual back in the jury
20 room. You talk about these instructions, you understand
21 them, and you look at the evidence and then you answer
22 this.

23 THE COURT REPORTER: Could you please use the
24 microphone.

25 (Discussion off the record.)

1 MR. WEBB: All right. So this is what you have
2 to answer. When you're all said and done, and you've
3 reached a verdict, you all come in here, and you hand this
4 up there, and the judge will read this for everyone to
5 hear.

6 So we really think this is important, and we
7 want you all to look at it very carefully.

8 All right. I'm going to start with number 4,
9 and that's the contributory infringement. That's the one
10 where Mr. Ravin will be personally liable here.

11 I would submit to you that in view of the
12 instructions and the evidence, you check no for every one
13 of those boxes, he is not personally liable.

14 Same thing for vicarious liability. This is
15 number 5. Check every single one of those no, he should
16 not be held personally liable.

17 Then you ask this question here, which is a
18 better measure of damages, lost profits or fair market
19 value? Based upon the evidence that you've seen, we would
20 submit that the fair market value is a better approach in
21 this case, and that would be either the walk-away number
22 offered by Mr. Hampton, or the profit number 14.1. And
23 that's for you all to decide.

24 There's been a total failure of proof for lost
25 profits, and that would be question number 6A.

1 Causal link. When you guys are back there
2 debating this, and you guys are talking about all these
3 issues, I want someone to say this instruction is something
4 we need to look at because it talks about causation,
5 something you didn't hear from Oracle in the last two
6 hours.

7 All right. So the next two numbers, this is for
8 you to decide. This is just the evidence that we've
9 provided. The profits will be 14.1 million, again, that's
10 the number you take away all the expenses for growth, and
11 the fair market value would be the walk-away number of
12 about \$9.3 million.

13 And when it gets to contributory -- actually
14 I'll just do this, it's probably easier. When it gets to
15 contributory and vicarious liability, I want you to put a
16 zero there on behalf of Mr. Ravin.

17 Statutory damages. We talked about that,
18 Congress enabled you all to decide what the number should
19 be based upon your range of 750 up. There, and only there,
20 you make a decision about innocent versus willful.

21 We would submit to you that this infringement
22 was not willful, it was innocent. So with respect to
23 question number 9, you would check the boxes for yes, it's
24 innocent infringement, and for willful infringement you
25 would check no across the board.

1 Statutory damages. There are 62 works
2 registrations that are at issue, not the thousands and
3 hundreds of thousands of copies, the works.

4 And, again, I left that blank open because
5 that's for you all to decide. That's totally within your
6 discretion within that range. You just do what you think
7 is right.

8 And again, for contributory infringement and for
9 vicarious liability, zero. And that again relates to my
10 client's personal liability.

11 When you get to talking about inducing breach of
12 contract, interference, check no. Because once again for
13 the interference piece, remember, they've got to show
14 affirmative misrepresentation, reliance in fact, and
15 causation. They can't do it, ladies and gentlemen.

16 So you put a zero in terms of the money damages
17 owed there as well.

18 And the intentional interference, no, no, and
19 zeros.

20 Same thing for all the computer fraud claims.
21 Again, that relates to the California statute and also the
22 Nevada statute. You would check no, because they have not
23 met their burden of proof, and zero when it comes for
24 damages.

25 And here's the Nevada statute for you all to

1 look at there as well.

2 And as you're going through this process, I want
3 you to be thinking a little bit like lawyers and think
4 about burden of proof and think about actual evidence.
5 That will help guide you once you look at the user's manual
6 about how to check these boxes.

7 I'm going to talk about more of that in just a
8 minute.

9 So nonduplicative damages to Oracle America
10 would be zero. They don't own the copyright in this case,
11 it's the other Oracle company, the Oracle International
12 Corporation.

13 And for them, I put down Mr. Hampton's walk-away
14 number. But, again, that's for you to decide, what damages
15 have they actually suffered, and, more importantly, what
16 damages has Oracle actually proved and have they met their
17 burden of proof.

18 And, finally, when it comes to punitive damages
19 as we just discussed, I would submit to you that there
20 should be no punitive damages. They have to first prove
21 their entitlement to the underlying claim, and they simply
22 can't do that, and they certainly can't prove that my
23 client acted in a manner that would warrant punitive
24 damages.

25 The fact is the three essential truths are still

1 intact. The customer has the right to choose, Oracle
2 hasn't proved that they suffered any actual harm, and
3 there's no evidence that these customers would have stayed
4 and paid.

5 But what about those two weeks of trial?

6 What about all that talk of master copying and
7 downloading and libraries and silos and all these terrible
8 things?

9 I told you in opening statement that that might
10 be coming. I drew on this board, this very board, I said,
11 listen, when you hear this evidence that's going to be
12 coming in, you could put it in one of two buckets, the real
13 proof that's going to help you make the decisions, the
14 decisions on this verdict form, and then something else
15 here, something else not intended to help give you real
16 proof to answer questions, something else.

17 I told you earlier about the no-brainer, this
18 lawyer tool that allows you to think one thing and really
19 be after something else. That and some other things go in
20 this bucket.

21 And there's a name for this bucket. You see
22 clever lawyers who do this for a living understand what's
23 in this bucket.

24 You see that? You all see that? That is a red
25 fish. But not just any red fish. It has a name. It's

1 called a red herring.

2 Red herrings are designed to distract you, to
3 divert your attention, to have you thinking about something
4 else while you're not thinking about the real important
5 thing.

6 And in this case you have seen a series of red
7 herrings, and I can't help but address a few of them right
8 now.

9 First of all, number of copies. Even in closing
10 you saw the copies going all the way from here to
11 Pleasanton, a Library of Congress full of copies.

12 But I want you to do something for me. Look at
13 the instructions and tell me where the number of copies
14 fits in there anywhere. It doesn't. The number of copies
15 is meaningless to your job. It was done for one reason,
16 and one reason only, to make you think what we did was
17 really, really bad.

18 Dr. Davis took the stand and told you about
19 hundreds of thousands of copies. He told you for almost an
20 hour about all the copies that he found on our servers, and
21 I admitted to that the first day of this trial.

22 They wanted to make us look as though we are
23 doing something really, really bad because you won't be
24 thinking about this.

25 And about the library, and silos, and sharing

1 software. Those things deal with matters that we admitted
2 earlier on in this case. During opening statement I told
3 you we did these things.

4 So why is it that I had to go through the entire
5 process spending all that time telling you about it again.

6 But there's more.

7 Invalid business, also known as fruit of the
8 poisonous tree. They want you to believe that our business
9 from the very beginning was so wrong and illegal and
10 invalid that we couldn't possibly exist.

11 Where on the jury form is that? Where in the
12 instructions do they talk about fruit of the poisonous tree
13 or an invalid business model or a corrupt business? It's
14 not there. Again, it's meant to divert you from the true
15 goal in this case.

16 How about this? Contract backlog. Where in the
17 instructions does that fit in about these prospective
18 opportunities where our client may stay for 15 years might
19 pay us X amount of money, over a billion dollars. That's
20 not what we've actually earned.

21 In this case you've seen that the total revenue
22 we've earned is about \$100 million, not 1.6.

23 What was the business with the contract backlog
24 stuff anyhow? Is that in the instructions, on your verdict
25 form? No.

1 Security updates. What in the world does
2 security updates have to do with the questions that you're
3 answering in this case?

4 Let me give you another view as a lawyer tool.
5 Some lawyers will try to cast their arguments in the terms
6 of a safety issue, security issue, because people sometimes
7 make decisions on what is best, safest and most secure, not
8 based upon the evidence but this idea that really a certain
9 way promotes security and safety. I would submit to you
10 that's the only purpose of the security update deal. We
11 have never contended we did this. We have never told a
12 client we did this. It's not an issue in this case.

13 Grigsby. Do you remember the Grigsby video
14 where he had the presentation that he put the Rimini Street
15 stamp on it, rather than his?

16 Where is that in this case? Where is that on
17 the instructions? Is that on the verdict form? Do you
18 have to answer a question about Ray Grigsby? Why was that
19 even presented to you?

20 The no-brainer, the hypothetical question that
21 appears that it answers something important, but it really
22 doesn't answer anything.

23 Case in point, Brian Baggett. He said "I would
24 not have gone with them if I knew they were infringing, but
25 I sure as heck wasn't going to stay with Oracle."

1 Every single question like this that was asked
2 to a customer, they answered it the only way anyone would
3 answer it. No one would answer it, yeah, I'd love to do
4 business with an infringer.

5 And perhaps the biggest of all, TomorrowNow.

6 Can we go back to the presentation, Marie?

7 TomorrowNow. You heard evidence in this case
8 about a company that Mr. Ravin was associated with who he
9 left and it later was sued by Oracle.

10 The Court has given you instruction. The
11 instruction says you may not use evidence concerning
12 TomorrowNow to infer that, because Seth Ravin was at one
13 time associated with TomorrowNow, he, Rimini Street, or any
14 individual employed by Rimini Street did, or was more
15 likely to have done, the things Oracle contends.

16 This case is about Rimini Street, but Oracle
17 wants you to believe that TomorrowNow and Rimini Street all
18 together, and conclude that because SAP shut them down, and
19 because some official admitted to wrongdoing that all of a
20 sudden it's on us.

21 This case is about Rimini Street, not
22 TomorrowNow, and if you follow this instruction, you won't
23 be fooled by that trick.

24 What you find is when you actually start looking
25 at what's happened here, understanding as to what's

1 happened and what you've been a witness to over the past
2 few weeks, the picture becomes remarkably clear.

3 For two weeks they talked about this. Two weeks
4 they talked about all these things that aren't real proof,
5 that aren't in the bucket that you need to have to make
6 decisions on that very important verdict form.

7 Why did they do that? This bucket is empty.
8 There's no proof of causation, there's no proof these
9 customers would have stayed and paid, there's no proof of
10 actual harm.

11 They filled this bucket up a lot. You have to
12 roll up your pant legs because the fish are so deep in this
13 courtroom.

14 But the bucket, the one that actually matters,
15 is absolutely empty. Why did they do that? If they had a
16 strong case of causation, why did they spend all their time
17 on this stuff?

18 Ladies and gentlemen, I -- every trial I talk to
19 my wife, and I do my opening statement for her, I talk
20 about all the strategies in the case.

21 We've been married for 24 years. I've known her
22 since I was in the first grade. She is my staunchest
23 champion and my most severe critic. She's not afraid to
24 tell me exactly what she thinks. And I value her opinion
25 greatly.

1 When I'm in trial -- I mean, we are very busy,
2 all these folks work really, really hard, but I find time
3 every night to give her a call and give her an update. And
4 she knows what's going on, and she's very interested. And
5 I tell her what I think. Some days I tell her, hey, we had
6 a good day, sometimes I tell her we took a few on the chin.

7 After day 8 I called her, and I said, you know,
8 we're getting destroyed in this thing. All we're hearing
9 is that -- all of this stuff, and I am genuinely worried.

10 I am worried that this is going to work, that
11 this case really about simple causation, where there's
12 linkage between infringement and money, something that
13 clear, whether the jury is actually going to be able to see
14 that, in view of all this, with some very fine lawyers. I
15 said I'm worried. I don't think they're going to get it.

16 She always has the right thing to say, and she
17 said, "Don't worry, juries always get it right."

18 I told you in opening, this is a failure of
19 proof case. I didn't tell you that we're going to deny
20 these acts, I didn't tell you that we're going to try to
21 shirk our responsibility.

22 I'm going to say, listen, just hold Oracle to
23 its burden. Make them prove that they are going to get
24 this money from us, that's all. Make it fair. But you've
25 got to do that based upon the evidence.

1 You have a job to do. It cannot be clouded by
2 anything other than the evidence.

3 It is possible that I or my team have said
4 something in this trial that you didn't like. It is
5 possible that you may not like my client or some of my
6 witnesses. That's natural, that's human. Sometimes people
7 don't like things, like people.

8 But if you follow the instructions, you can't be
9 guided by that, you can't be influenced by that. You must
10 not be influenced by personal likes or dislikes or
11 opinions, prejudices or sympathy. You have to make your
12 decision on evidence. You're a jury. You're here to do
13 that.

14 It is possible that you may get a result that
15 doesn't feel personally satisfying, may not feel
16 vindicating to you based on the evidence, but if you follow
17 the evidence, if you follow these instructions, you're
18 doing your job, and that's why you're here.

19 I don't get to talk to you again. My say is
20 over. Mr. Isaacson is a very capable lawyer, and I'm
21 confident he's going to get up here and say some very
22 persuasive things, and I'm done.

23 I have to let the evidence or lack of evidence
24 do my talking for me. I have to have these instructions,
25 the user's manual back there in that jury room guide you

1 and direct you to the right result because I can't say
2 anything else.

3 And even though Mr. Isaacson gets the last word,
4 you get the final word. You are the ones who get to make a
5 choice.

6 I told you from the first day of this trial it's
7 about choice, and the choice now is yours. Do you choose
8 to follow the instructions, to look at the real proof to
9 make your decision, or do you choose to be distracted by
10 things that don't really matter.

11 You have to make that choice based upon the
12 evidence. You have to make that choice based upon the
13 instructions.

14 Keep your eye on the ball. You have to keep
15 your eye on the ball. And if you do that, and if you keep
16 your eye on the ball and make decisions based upon
17 evidence, we have absolutely no doubt that you'll make the
18 right choice in this case.

19 On behalf of my entire team, I want to thank you
20 for your time. This has been a long and complex and
21 confusing ordeal, and we understand that, and you've been
22 very attentive, each and every one of you.

23 And again, with Mr. Isaacson, we all thank you
24 for your time. And as I sit down I just want to say just
25 keep your eye on the ball and make the evidence match up

1 with the result.

2 Thank you very much for your time.

3 THE COURT: Thank you, Mr. Webb. Ladies and
4 gentlemen, we'll take a break, approximately 15 minutes,
5 and return for the final argument, and this case will then
6 be submitted to you.

7 The admonitions still apply. So you're getting
8 close to when you can discuss it, but you're not quite
9 there yet. So go ahead and step down and we'll take a
10 short recess.

11 (Recess from 3:31 p.m. until 3:56 p.m.)

12 (Outside the presence of the jury.)

13 COURTROOM ADMINISTRATOR: Please rise.

14 THE COURT: Have a seat, please.

15 The record will show we're in open court without
16 the jury present, parties and counsel are present.

17 Counsel, I had during the break time distributed
18 to you a copy of the final verdict form, and I wanted to
19 explain how it differs very slightly with regard to some
20 edits before we started arguments.

21 And specifically what I did, I asked my clerk to
22 just do a very careful proofread of the entire verdict form
23 because we had gone back and forth on it in various
24 respects, and he did that, and I've reviewed what he found,
25 and we had all of those -- I say all, but it's only a few

1 edits corrected. So I wanted to let you know what that is.

2 On this new verdict form that's been provided to
3 you, on page 6, at line 4 in the middle, he added -- jury
4 instruction entitled "copyright infringement" because
5 before the word infringement had been missed.

6 At line 15, the word -- there was an extra word
7 in there in the middle of line 15, was the word was. That
8 was taken out. It was mistakenly left in.

9 On line 20 at the end, again, copyright
10 infringement was added before it went on to damages and
11 willful infringement.

12 And then on page 12, on line 12, the fifth,
13 sixth, seventh word mistakenly read another on the form
14 that you had when it should have read "other." So the a-n
15 was stricken.

16 And on the same page at line 25 in the middle of
17 the line, the same error was made. It read "another" on
18 the last form, it should be "other," and that was
19 corrected.

20 And those are the limited changes. I just
21 wanted you to know.

22 Because of the length of verdict form, I'm going
23 to send in verdict forms along with sets of instructions
24 for each juror. There will be one original form, and the
25 others that are being sent to the jury will have the word

1 copy marked on them, and the original will be contained in
2 the envelope for the foreperson.

3 So that's your heads-up. Let's bring the jury
4 in and go to final argument.

5 (Jurors enter courtroom at 4:00 p.m.)

6 THE COURT: All right. Have a seat, please.

7 The record will show that we are in open court.
8 The jury is all present, counsel and parties are present.

9 And, Mr. Isaacson, it's now your opportunity to
10 give the final rebuttal argument on behalf of Plaintiffs
11 Oracle.

12 MR. ISAACSON: Thank you, Your Honor.

13 There's a reason that lawyers stand when the
14 jury comes in. It's because the lawyers on both sides of
15 this Court respect the jury system.

16 The judge told you about the importance of the
17 jury system in the Constitution. The Constitution also
18 talks about the copyright clause, Article I, Section 8.
19 When this is all over and you're allowed to look at things,
20 you can look at the Constitution.

21 But it's not the lawyers that --

22 THE COURT REPORTER: I'm sorry. I can't hear
23 you.

24 MR. ISAACSON: -- jury system. We're speaking
25 to you. But it's our clients who come to the jury system.

1 Oracle has come to you asking you, for big
2 companies and small, to honor the law, to look at the
3 evidence, to look at what happened here, and to reach a
4 verdict based on the parties before you, Oracle, Rimini,
5 and Mr. Ravin. That's who your verdict is about.

6 Now, at the outset we were told about the ball,
7 but right before that, we were -- said why did we spend two
8 weeks talking about these things, the conduct already
9 admitted?

10 Actually, all that was ever admitted at the
11 beginning of this trial was infringement of PeopleSoft
12 software. All these other things were walls that came down
13 before trial -- during the trial.

14 All of them were lies that were told before
15 trial, during trial, and it wasn't until now, with all the
16 walls coming down that really the full truth is coming out,
17 that this was a corrupt business due to copyright
18 violations and lying from the beginning.

19 We didn't spend two weeks on these things to
20 show you some bits and pieces of copyright violations. We
21 did this to show you what this company was about.

22 And what does that show you? It shows you the
23 whole ball. Causation. What caused the customers to leave
24 Oracle, a company corrupt and full of our software.

25 Without that software, there was no business.

1 The company -- the customers don't leave except at their
2 normal rates, rates that Elizabeth Dean took into account,
3 and then some.

4 All of those two weeks were about the question
5 that was put before you by Rimini Street, what happened
6 here. Massive copyright violations that caused customers
7 to leave; caused.

8 Now, if I was going to talk about the whole
9 ball -- and there's been a bouncing ball throughout this
10 litigation. The whole ball has changed a lot.

11 Right now we're on the last -- we're on the last
12 gasp of Rimini Street for a defense, and that's that
13 instruction.

14 Now, if I was going to do that, if I was going
15 to show you page 37, I might show -- page 38, I might start
16 with page 37 before.

17 Copyright - actual damages.

18 "While there is no precise formula for
19 determining actual damages, your award must be based on
20 evidence, not on speculation, guesswork, or conjecture."

21 And we have never asked you for guesswork. We
22 have put Elizabeth Dean in front of you and demonstrated
23 through a range of other evidence that I will quickly
24 resummarize for you about how this business was built on
25 copyright violations.

1 "Determining the amount of Oracle's actual
2 damages may involve some uncertainty."

3 It's okay to be somewhat uncertain. That's the
4 instruction. We are not required to establish the amount
5 of actual damages with precision because that wouldn't be
6 fair to us.

7 All right. When someone does wrong to you, it's
8 their responsibility. And sometimes it's hard to figure
9 out how much wrong they did to you exactly because you --
10 because you don't -- because of what they've done. But
11 we've done it with enormous amounts of precision.

12 Then you get to page 38 which counsel showed
13 you. We will blow it up here on the screen. All right?

14 The issue is was infringement a substantial
15 factor in causing damages. And, remember, this is just
16 copyright. This is not interference and lying.

17 For interference and lying we talked about
18 causation because we showed that these -- without these
19 lies, none of these people would have gone to the company,
20 and the lies were all within standard messages.

21 But for copyright, a substantial factor is a
22 factor that a reasonable person would consider to have
23 contributed. It's more than a remote or trivial factor.
24 It does not have to be the only cause of the harm.

25 It's got to be substantial, and this corrupt

1 business from the beginning was substantial. That's what
2 we spent two weeks proving to you.

3 Now, that does mean if a client left Oracle for
4 reasons unrelated to our infringement, there's no causal
5 relationship. But all we have to show is that the clients
6 who left, that a substantial factor in that was this
7 business of violating our copyrights.

8 And you can ask yourself who's going to leave
9 for Rimini Street if they don't have the Oracle software?
10 There was never any explanation of that.

11 The next -- I would also -- let's go to page 41.
12 I'll touch on this while we're on the instructions.

13 Fair market value license. This was the Hampton
14 box that they want you to fill in. And I will remind you
15 that counsel talked about a hypothetical license.
16 Mr. Hampton said, "I never did a hypothetical license, I
17 did my own thing called fair market value."

18 You're not going to check that box because there
19 was no evidence for it. You should check the box for lost
20 profits.

21 Now, let's go to the verdict form. First of
22 all, let's look at 1, 2, and 3.

23 Counsel told you that they're accepting
24 responsibility in this situation, and he never asked you
25 how to -- never told you how Rimini says to fill out

1 questions 1, 2, and 3 for the additional copyright
2 infringement. Rimini would not let him do that.

3 They say they are fessing up here, but they are
4 walking it back because they didn't tell you, yes, we are
5 guilty about Siebel, JDE. They never said that.

6 Let's look at the iPhone slide.

7 They even said this, they said, look, we're
8 fessing up here, and then they show you this and say
9 everything we're doing is okay.

10 As if Apple is going to say, if you put some
11 apps on your phone, it's okay to steal our software. And
12 that's what they were saying to you. That's not in the
13 instructions.

14 Every time they take a step forward, they creep
15 forward to admitting something wrong, they take it back
16 because Rimini Street can't fully admit it.

17 And even when they are admitting things today,
18 when he asked you to fill out that verdict form, he asked
19 you to fill out numbers for Rimini Street and nothing for
20 Mr. Ravin.

21 Mr. Ravin has accepted no responsibility. If
22 there's any money to be paid, he wants his company to be
23 paid, just like he never told his employees the truth about
24 what was going on, just like he built a business based
25 on -- without -- without being fair to them, he now wants

1 his company to pay and not him.

2 All right. Let's go to the damages portions of
3 the verdict.

4 I did this before, I want to do it again because
5 the numbers are hard, and this time we've got a way to do
6 it quickly for you.

7 PTX 6010 is the Dean summary. And I want to
8 show you that every number that I've asked you for, that
9 Oracle has asked you for, is coming out -- correctly out of
10 our estimate of damages. So 6A comes out of PTX there.
11 Those three numbers, they add up to 19.2 million -- I'm
12 sorry, add up to 95.7 million, and that's the total lost
13 profits. That's 6A.

14 6B, the infringer profits. Those three numbers,
15 they add up to 16.4 million, after we deducted that
16 16.2 million. That's 6B.

17 6C, fair market value license.

18 Okay. Elizabeth Dean testified that if you did
19 apply this avoided cost method, which makes no sense, if
20 you did, her number would be higher than her actual
21 estimate of, add it up, it would be over 112.1 million.

22 So if you actually added that, actually used
23 that number, I would say 112.1 million and add an extra
24 dollar, because that's what she said, it would be higher
25 than her damage estimate.

1 All right. Next, contributory infringement.
2 This is where Mr. Ravin wants to be let off. He should be
3 on the hook for the entire 112.1 million, not just his
4 company.

5 Same thing for question 8, vicarious
6 infringement, same figure.

7 Question 14, inducing breach of contract. This
8 was the amount based -- this is the amount from Christian
9 Hicks based on Oracle America's share of the Siebel
10 business, 21.1 million.

11 Question 15, intentional interference. This is
12 the lying count. And did we ever hear in that whole
13 presentation any denial of all the lies?

14 The only thing that was said was Mr. Maddock
15 only talked to 10 customers, and Mr. Maddock said "I don't
16 talk to customers anymore, it's my staff, and they use the
17 standard messaging."

18 Of course, it's not Mr. Maddock talking to
19 customers, it's the sales force and the marketing force
20 which Mr. Rowe told you about, standard messaging of lies;
21 117.6 million.

22 Question 16. This is Oracle International
23 Corporation's 39 percent share of the lie -- of the damage
24 caused by the lies; 76.5 million. Question 16.

25 Question 17. This is the California Computer

1 Act. This is either the customers that were happening
2 during the automated downloading period, which would be
3 8.8 million, or their share of -- or Oracle America's share
4 of the Siebel business, 21.1 million.

5 California act again. This is for Oracle
6 International. This is the 39 percent share, 13.8 -- 5.6
7 or 13.8.

8 That's question 19 -- now question 19. Now
9 we're to the Nevada statute. These are the same numbers as
10 the California statute. So it's 21.1 or 5.6 to 13.8.

11 And then the nonduplicative amount. Oracle
12 America's share of the nonduplicative amounts add up to
13 117.6 million, and Oracle International's add up to
14 112.1 million.

15 So a few other points.

16 Can we look at their -- the slide on
17 infringement hypothetical.

18 All right. This was shown to you. And this is
19 one of those things that ignores the whole point because
20 the relevant point is sign up with Rimini. Who would have
21 signed up with Rimini if they didn't have the copyrighted
22 Oracle software, or if they had known the truth? Nobody
23 except William Leake.

24 Let's follow the bouncing ball because there was
25 a few other balls. There was again a discussion of other

1 third-party support, but at the end of the day, the
2 evidence showed from their own witnesses that for Siebel
3 and PeopleSoft, there were only two companies that took two
4 customers, and Elizabeth Dean took those companies into
5 account and analyzed those companies.

6 The -- Mr. Yourdon in causation. They say our
7 causation case was based only on Mr. Yourdon, and after you
8 broke down all those walls, that could not be more false.

9 Now, Mr. Yourdon's testimony was as a 25-year
10 expert in the industry, the only one who deals with
11 customers on a regular basis, who examined not just 17
12 depositions, but records of 200 customers, and he said that
13 group of 5 percent at the end of the day would be like the
14 95 percent.

15 When they show you his testimony saying were
16 they in the 5 percent, the people who left? Of course they
17 were. They were the people who left.

18 But he said if they would have stayed at the
19 same rate, and he said also -- and this was not true what
20 was said to you about Mr. Yourdon, he said and testified
21 that if they had known of the illegal conduct, they would
22 not have gone to Oracle.

23 But it wasn't just Mr. Yourdon. Elizabeth Dean
24 investigated the third-party support field, and she
25 analyzed damages customer by customer.

1 Safra Catz testified about the customers that
2 were lost from Rimini Street.

3 Elizabeth Dean said she took the missing
4 customers into account such as the Bausch & Lomb's.

5 Rimini documents talked about taking
6 \$300 million of Oracle business. Other Rimini documents
7 talked about how they were taking Oracle customers.

8 Seth Ravin, on the stand, could not deny, when I
9 showed him all the clients that they were taking that had
10 copyright violations on which they built their company, he
11 could not deny all of this.

12 Dr. Davis was an essential witness on causation,
13 because he showed us that there were copyright violations
14 in all the major early customers and said this business
15 from the beginning was built on copyright infringement.

16 He says that -- and so when you pile all that
17 up, what was the evidence on the other side?

18 He says this is a case about no evidence. What
19 was the evidence that any customer would have gone to
20 Rimini Street if they didn't have the Oracle software that
21 they improperly took in violation of the copyright laws?
22 There was no such evidence.

23 A few other points. Counsel said that the
24 bottle, in a bottle was about one customer. That's not
25 true. PTX 50 and 51, that was Jeff Allen's analysis of all

1 the remote environments, and it wasn't solved in 2010.

2 Metalink, he showed you terms of use for them.
3 He didn't show you any terms of use for eDelivery or
4 Customer Connection.

5 He said -- he talked about the computer statutes
6 and he said focus on authorization. The clients authorized
7 it.

8 I told you about that when I went through the
9 jury instructions. It's not the clients authorizing it.
10 It's did Oracle authorize you to come on the computer.

11 Answer, no.

12 He said Rimini could have been operating remote
13 from day one. That was Mr. Hampton, that was the lie
14 planted by Seth Ravin into Mr. Hampton and all of his
15 assumptions that followed thereafter about operating
16 remotely.

17 And that's why the TomorrowNow evidence was
18 relevant. That's why we brought up TomorrowNow, because
19 when Seth Ravin found out that TomorrowNow had admitted
20 wrongdoing and went 100 percent remote, he said that was
21 ridiculous. No, they couldn't do it, much less from day
22 one.

23 He says -- counsel says there's -- customers
24 relied -- there's no evidence that customers relied on
25 Rimini representations.

1 All of the evidence was that the customers
2 believed and acted in reliance on Rimini obeying the
3 copyright laws, and that the representation to the
4 contrary, that we didn't have cross-use, that we didn't
5 have the libraries, that we didn't have the general
6 environments, that all of those were false, and that's when
7 I read all 17 of those to you out loud.

8 He says Mr. Baggett -- we weren't allowed to
9 tell him what was actually going on during trial, we
10 couldn't talk to him about the testimony.

11 You could have told him before trial. You could
12 have told him years ago exactly what was going on here.

13 Why was Mr. Grigsby brought up? Because he
14 copied JD Edwards documents. That's part of copyright
15 violations.

16 Binary equals. Why don't we show that slide.

17 Shelley Blackmarr is not an expert on what
18 things are binary equals. She says she thought they were
19 binary equals, but the rest of the company was doing it if
20 they had similar code.

21 Christian Hicks was quoted -- next, rebuttal 18.

22 The top part of this is what counsel read to
23 you,

24 "If you skip down to the next question, so when
25 you totalled the analysis provided in Exhibit 10, you found

1 the average increase was 2.4 seconds?

2 "Yes."

3 Here's what he said next.

4 "Yes. Hang on a second. That's this analysis
5 done by another expert, the guy who ignored Thanksgiving.
6 That doesn't make any sense."

7 That was not shown to you.

8 Rebuttal slide 20.

9 This quote from Safra Catz was shown to you.

10 "Maintenance continues to be a very profitable
11 part of our business.

12 "Yes.

13 "Do you remember saying that?"

14 What did they leave out?

15 "And do you agree with that?

16 "Yes. Maintenance is absolutely critical to
17 improving our business and our profitability margins. It's
18 absolutely critical, it's the only way we're able to afford
19 to invest in our product in our companies."

20 They said that Elizabeth Dean never considered
21 the cost of noninfringing. That's not true. She said it
22 was the cost of the whole business.

23 At the end of the day, Rimini, from the
24 beginning of this case, tried to be the masters of how to
25 get away with it.

1 It started with denying that there was a
2 library, denying that there were cross-uses and fixes.

3 At the beginning of the trial they kept trying
4 to -- these things. They talked about the things that were
5 in the library, not in the library, the installation media.
6 The walls kept coming down.

7 Then they brought Mr. Hampton in with his
8 fairytale of value of use that he had never tried in any
9 other case that was full of assumptions that didn't make
10 sense and that we ultimately found out came from a
11 discussion from Mr. Ravin.

12 What we are asking you for, it's time for truth
13 to prevail. The walls are down. You do have the evidence
14 in front of you, you do know the truth, it's time for
15 accountability. It's time for accountability for CEOs.

16 When you go through the verdict form, we know
17 you'll continue to work hard. We know you'll pay attention
18 a lot, and we thank you for that.

19 But we ask you to understand that truth and
20 accountability matter and that you reach judgment
21 accordingly.

22 I thank you for your time.

23 THE COURT: Thank you, Mr. Isaacson.

24 Ladies and gentlemen, you'll now be -- you will
25 now turn to deliberations.

1 It's late in the day, 4:20 now. You will
2 have -- each one of you will have a set of instructions,
3 and each one of you will also have a copy of the verdict
4 form.

5 Your first business, of course, as I indicated
6 in the instructions, will be to choose your foreperson who
7 will be your spokesperson here in court and who will
8 ultimately be responsible for signing the original verdict
9 form.

10 The original verdict form is enclosed in this
11 brown envelope. The copies of the verdict form are with
12 it, and I will give those now to our court clerk because
13 she can give those to you along with the instructions which
14 she already has.

15 Let me talk about the admonition. You can now
16 fully discuss this case among yourselves. And I've watched
17 you since we started, and I'm very pleased to see that
18 you're a good group who gets along and strikes me as
19 someone who will be able to discuss this case very well.

20 You can discuss it. You can review any exhibits
21 that you would like to see. We're not going to send all
22 these exhibits in. If there is a particular exhibit you
23 would like to see -- do we have them in a binder at this
24 point?

25 COURTROOM ADMINISTRATOR: I do, I have them down

1 to what's admitted.

2 THE COURT: So you will have a binder in the
3 jury room. You will not have to send out a request.

4 There have been a number of screens put up in
5 front of you during the course of examination of witnesses.
6 Some of those were to assist the questioning and were not
7 actually in evidence. So you do not have most of those as
8 exhibits.

9 The exhibits were almost always identified as
10 PTX or DTX, and that is what you will actually have in the
11 jury room.

12 The testimony, of course, you've heard from the
13 witnesses. You've also seen the videotapes of depositions,
14 and I've instructed you regarding that.

15 The last word I would have to say is it's so
16 critical that you not discuss this case outside the jury
17 room, that you only discuss it among yourselves.

18 All those admonitions that I outlined to you
19 still apply as to anything outside the jury room. So
20 discuss it freely and fully between you.

21 I know there's a lot to cover, and I know that
22 it's an undertaking, and it's just part of this public
23 service that jury duty involves.

24 And I'm confident that you're a strong jury who
25 will be able to satisfy that responsibility. But under no

1 circumstances should you discuss this case in any way
2 outside the jury room.

3 Under no circumstances should you allow yourself
4 to be exposed to anyone speaking about it.

5 Under no circumstances would you ever want to
6 use anything that's not in the way of exhibits and in front
7 of all of you in the jury room, so no Googling, no Internet
8 searches, no dictionaries, nothing that's not included in
9 the evidence that you have in front of you in the jury
10 room.

11 The hours are significant to me here. We've
12 been running on an 8:00 to 2:00 schedule on Tuesdays,
13 Wednesdays and Thursdays, but now that this case is to you,
14 it's up to you to determine which hours you would like to
15 meet.

16 I suggest a full day, obviously, but if you'd
17 like to meet at 8:00 in the morning or 9:00 in the morning,
18 either one of those times I would suggest is fine.

19 If you want to go later in the afternoon until
20 4:00 to 5:00, I would suggest to you that those times are
21 fine.

22 The only thing I would ask is that after you've
23 had a chance to discuss that among yourselves, that someone
24 give a note to Ms. Negrete as to what hours you'll be
25 deliberating, and if that changes, of course, you could

1 advise us accordingly.

2 But that's significant because we have so many
3 people who are interested in following when this case is
4 finally decided and people we need to notify and they need
5 to be available. So your hours are important to people who
6 are here in the courtroom.

7 But you're the ones who will decide those. So
8 just let us know what will work best to you and is mutually
9 acceptable all the way around.

10 You will be provided with the same types of
11 refreshments and, I think, the better food that was finally
12 brought in, I think, starting last week.

13 And if you have any problems with what you're
14 being provided or not provided, you may send a little note
15 out and we'll see what we can do about that.

16 So I think that covers what I need to discuss
17 with you at this time. So I think again I speak on behalf
18 of everyone in the courtroom, I thank you for your
19 attention on this case and for assuming this heavy
20 responsibility that goes with deciding this particular
21 case.

22 So at this time, I'm going to excuse you for
23 purposes of your deliberations.

24 I do need to swear in our court marshal who will
25 be outside your door. If you have any needs or anything

1 like that, you can hand a note to him, and he'll work for
2 us.

3 (Bailiff sworn to take charge of the jury.)

4 COURTROOM ADMINISTRATOR: Thank you.

5 THE COURT: All right. Thank you. You may step
6 down. Thank you.

7 (Jurors exit courtroom at 4:28 p.m.)

8 THE COURT: I'm not aware of anything that the
9 Court needs to address.

10 You can have a seat.

11 Counsel, you know the importance of staying in
12 touch with the court clerk at all times. And we'll let you
13 know what those hours are just as soon as the jury advises
14 us, and we will take it from there.

15 There will not be a shortened schedule. If we
16 went until Friday, I would go the day, we'd work it out,
17 and if it went over until Monday, they would start in the
18 morning for the benefit of anyone's calendars. I have no
19 idea how long the jury will take, obviously.

20 All right. Thank you very much.

21 MR. ISAACSON: Logistics-wise, we'll be about
22 three miles away.

23 MR. WEBB: Regrettably, we are further than
24 that. Our plan, Judge, is to have a partner on the team
25 here at all times for questions and things, but for the

1 verdict we might ask for a little bit of a head start so we
2 can all get back here. I know Mr. Ravin would obviously
3 like to be here in person.

4 THE COURT: All right. That's what we will do.

5 One final point. In the event I should get a
6 question from the jurors, sometimes it's a very simple
7 question, and it's much easier to resolve with everyone on
8 the phone, so make sure we know how to reach you
9 telephonically.

10 But, of course, you have the right to be here,
11 and if anyone wants to be here at the time -- I don't bring
12 the jury in if they have a question, they'd send it out in
13 a written question, but I would not respond to it without
14 having informed both sides fully of the question and taken
15 input with regard to the answer.

16 Sometimes, if it's a very simple answer, I'll
17 run the proposed answer by counsel, and if they have input
18 one way or the other, I'm certainly listening.

19 If it's a more substantive question, I certainly
20 would encourage your being here. But once again, I'm
21 willing to work on that telephonically because it's been my
22 experience that if they send out a question, they tend to
23 wait until they get an answer, even though they're
24 encouraged to go on with other matters. So there is some
25 issue relative to being available for substantive

1 questions.

2 And, again, I follow the same practice, I would
3 review the written question with counsel, I would discuss a
4 proposed response, and no response would go to the jury
5 without having done that here in open court.

6 So that's the game plan.

7 I understand we have now received all the
8 exhibits that were not admitted because of the need for
9 redaction -- oh, and you had another point there too.

10 I'm going to review those, but I assume that
11 both sides have had an opportunity to review the exhibits
12 and their redactions and there's no objection to their
13 admission over and above what would have previously been
14 raised; is that correct?

15 MR. HIXSON: Your Honor, Oracle has not had an
16 opportunity to review their final redactions. We will do
17 that tonight.

18 THE COURT: I would need to know that first
19 thing in the morning before anything would go into the
20 jury.

21 MR. HIXSON: Thank you.

22 THE COURT: So let's plan on meeting here a half
23 hour from when the jury tells us -- before the jury tells
24 us they're coming in tomorrow morning, and I'll cover that
25 last base with counsel.

1 Let's see. I do need a stipulation from counsel
2 to return the exhibits which have not been admitted into
3 evidence, and to return the witness binders to counsel, and
4 also a stipulation to return deposition transcripts.

5 What are you talking about there, Dionna?

6 COURTROOM ADMINISTRATOR: All these boxes here
7 of the depositions.

8 THE COURT: All right. You're all more familiar
9 with that than I am. There will be a stipulation that they
10 be returned to counsel. I know you don't want them but you
11 get them.

12 All right. So I think that covers what I need.
13 I'll review that evidence and I'll touch bases on that in
14 the morning. Thank you very much.

15 COURTROOM ADMINISTRATOR: Please rise.

16 THE COURT: Court will be in recess.

17 (The proceedings adjourned at 4:33 p.m.)

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.

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Donna Davidson, RDR, CRR, CCR #318 Official Reporter	10/7/15 Date